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ABSTRACT

Management strategies that would be useful to college trustees and administrators in the actual situation of institutional merging or closing are discussed, and ways to assess the costs and benefits of taking on a new corporate identity or dissolving an old one are suggested. Trustee responsibilities and the following three typical financial problems are considered: short-term debt, inflated income estimates, and the problem of critical mass. After outlining the options available for corporate change, a general model for evaluating the options that an individual institution finds available to it is presented. Attention is directed to the viability of a merger, preparing for negotiations, and the financial basis for an acquisition merger. Bankruptcy as an instrument for reorganization, and specifically the Bankruptcy Reform Act of 1978 provisions, are addressed. The responsibility of the board of trustees in dissolution of the college corporation and some of the procedures that college counsel should research before a resolution for dissolution is adopted are outlined. Other areas of concern include: timing of the announcement to close; charter and legal obligations; making the announcement; academic concerns such as completion of graduation requirements; the library collections; and the alumni association. The following administrative and policy decisions are addressed: severance pay, unemployment insurance, out-placement of staff, the status of pension funds for those who retire, student records, and documents needed by students receiving financial aid. Appended materials include regulations of the states regarding the disposition of student records of private colleges and universities and state regulations regarding the dissolution of nonprofit colleges and universities. (SW)

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Colleges and Corporate Change:

Merger, Bankruptcy, and Closure

A Sourcebook for Trustees and Administrators

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Joseph P. O'Neill
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Introduction

During the past ten years college enrollment reached an all-time high; yet during that same period more than 140 private colleges merged with other institutions or closed their doors. The somber title of this sourcebook reflects the likelihood that the sharp decline in the number of 18-22 year olds in the decade to come will only accelerate the process of college closings and mergers.

The enrollment declines of the 1980's and 90's will not be spread evenly across the country. Nor is it likely that all institutions will bear equally the brunt of the decline. The enrollment losses will tend to be concentrated in the older industrialized states of New England, the Mid-Atlantic and the Midwest where by 1995 the number of high school graduates in some states will decline as much as 40 percent from their 1979 peak.

It is in this same belt of industrialized states where we find almost two-thirds of the nation's independent colleges and universities. Wealthy institutions, such as the Harvards and Amhersts, are not likely to feel the pressure of the enrollment declines in the same way that smaller, less well-endowed institutions will. The small liberal arts colleges, especially those in non-urban areas, are in special jeopardy because they cannot offset the loss of their traditional 18-22 year olds with gains among older adult students.

Mayhew and others identify several types of colleges which may be more vulnerable than most to the pressures of enrollment decline: Small, tuition-dependent, private liberal arts colleges; regional state colleges remote from urban centers; private, single-sex junior colleges; and the small, recently created private college serving a highly specific clientele.[1]

It was due to our work with small, tuition-dependent private colleges—which by all indicators and projections are among the most endangered of the species—that we came to write this sourcebook. Consequently, our analyses and discussion will focus specifically on their problems, though other

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[1]Lewis B. Mayhew, *Surviving the Eighties*, (San Francisco, Jossey-Bass, 1979); Crossland, "Learning to Cope with a Downward Slope," *Change* (Vol. 12, 5, July-August, 1980), pp. 18.

institutions, whether public or better endowed, may face similar difficulties.

In the winter of 1978 we were approached by the president of a member college who asked us whether we knew of any checklists or studies which would be of help in closing his college. To our surprise we found that neither state departments of education nor accrediting agencies had detailed procedural manuals on closing a college in an orderly manner.

We did find some first-rate studies of why colleges fail. There is also a large body of excellent research on the indices of financial health and stability. Finally, there are many helpful case studies which provided us with insights into a wide range of administrative, legal, financial, and human problems of closing and merger. But what we did not find was a compendium of these experiences in a form which would be useful to trustees and administrators in the actual situation of merging or closing. The purpose of this sourcebook is to fill that unmet need.

To avoid too diffuse a presentation, we have limited the scope of this book to those policy decisions and administrative problems which ordinarily arise when a change of *corporate* status occurs, *i.e.*, a change which requires some major modification or even dissolution of the college's legal charter. Consequently, we do not focus to any great extent on management decisions affecting personnel, curriculum, mission, location, or decisions to change the character of the student body. These are management strategies which may be of use to a college in distress but they do not ordinarily require a major change in the college's charter.

We hope this sourcebook strikes a balance between containing just enough detail for a senior college administrator or board member to get a solid feel of the problems involved in a corporate change without being overburdened with information only the specialist would require. The sourcebook suggests ways to assess the costs and benefits of taking on a new corporate identity or dissolving an old one. We will have succeeded in our purpose if use of the sourcebook limits the incidence of legal or administrative error. The first five chapters of the sourcebook are written primarily with trustees in mind. How can a trustee make a responsible judgment about the college's institutional health? What should he or she be concerned with when a major corporate change is contemplated? And what are a trustee's obligations and potential liabilities during the process of change? The final three chapters tend to focus on the duties and responsibilities of senior administrators, especially in the case of a college closing.

We realize that we have not anticipated all the problems which may arise in closings, mergers, bankruptcy, and reorganization. Nor did we expect to. Every college is a unique entity with difficulties and advantages peculiar to itself. Our intent has been to describe the general framework of each kind of

corporate change and the decisions and procedures which pertain to it. Since some legal procedures apply to more than one kind of change, we have not hesitated to repeat information where the context requires it.

We must take a moment to thank the many people who have helped us put this sourcebook together. In general we found a healthy tendency to share experiences about closings and mergers—perhaps that is a sign of the times. Those who have gone through the process of corporate change themselves were enormously helpful and open. Our resource panels and field readers helped us avoid many errors of fact and interpretation. More importantly, they provided positive advice and encouragement. Among the many people who helped us we owe particular thanks to the following:

Gail Chambers, a graduate student at the University of Rochester, helped us redraft the section on mergers and consolidation

Warren Evans of the Pennsylvania Department of Education provided a list of state regulations regarding student records

Edward Gaffney of the Notre Dame Center for Constitutional Studies prepared the appendix on state regulations and legislation regarding dissolution of colleges

John Haines of the Association of Colleges and Universities of the State of New York shared his manuscript on mergers

Everett Hadley of Drake University provided original material on the human concerns involved in closing a college

Rose Mary Healy of Iona College provided us with her dissertation on trustees and college closings

William J. MacLeod of the New England Association of Schools and Colleges, Inc. offered helpful insights into the role of accrediting associations

William M. Schilling of the University of Pennsylvania provided substantive comment on the section dealing with student financial aid

Evelyn Schroedl of Goucher College wrote a draft of the section on the disposition of student records and contributed to the appendix on state regulation of student records

Frank Vecchione of the law firm of Crummy, Del Deo, Dolan and Purcell in association with Phillip M. Grier and Julianne Still Thrift of the National Association of College and University Attorneys provided a draft of the section on bankruptcy

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Each of these people also took the time to read, correct, and generally approve various drafts. In addition, Larrimore Crockett of the Vermont Higher Education Council, Inc.; J. Victor Hahn of the Lutheran Council in the USA; Richard T. Ingram of the Association of Governing Boards of Universities and Colleges; Philip R. Moots of the law firm of Moots, Hultin, Weinberger and Cope; and James O'Neill of the District of Columbia Library provided valuable comment, encouragement, and direction.

Janna Bruene, as usual, did yeoman service in preparing the manuscript.

Last, but by no means least, we want to recognize the contribution made by Fred Crossland of the Ford Foundation, who not only encouraged us to broaden the scope of the project but who encouraged others to work with us.

Notwithstanding this help from so many sources we take full responsibility for any errors or omissions; those, poor things, are ours.

Joseph P. O'Neill
Samuel Barnett

Conference of Small Private Colleges
Princeton, New Jersey
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Indicators of Institutional Health

1.

"They sought it with thimbles, they sought it with care;
They pursued it with forks and hope;
They threatened its life with a railway share;
They charmed it with smiles and soap."
The Hunting of the Snark — *Lewis Carroll*

A. Trustee Responsibilities

The search for a satisfactory set of "indicators of institutional health" in higher education has been underway for more than five years. The quarry has proved elusive. It would not be unfair to say that as yet no single set of indicators has been found acceptable as a measure of institutional health. Nor has a really usable matrix or calculus of institutional health been developed.[1] Two factors have contributed to this situation: (a) No one set of indicators is likely to encompass the enormous diversity which almost 3000 institutions presents; and (b) indicators which are based only on financial statements cannot capture the vitality and leadership (or lack of it) at any given institution. As John Minter and Howard Bowen, two of the closest observers of the financial health of private colleges, have remarked:

> The condition of any institution or groups of institutions rests on many intangible factors which defy quantification. The ability of a college or university to survive and to progress depends, for example, on the capacity to attract students, the latent ability to raise money, the qualifications and loyalty of faculty and staff, the quality and commitment of the board and administrative leaders, the public reputation, the excellence of the program, the capacity to adjust to

[1] An excellent summary of the state of the art is provided in *Assessing Financial Health* (San Francisco, Jossey-Bass, 1979), edited by Carol Frances and Sharon Coldren of The American Council on Education.

> changing social conditions affecting the educational mission and methods, the condition of the physical plant, the willingness of constituencies to rise to emergencies, etc., etc. These intangible factors are reflected imperfectly if at all in accounting statements expressed in dollars. Yet these intangibles are true assets of an institution.[2]

Nonetheless, as flawed as the current state of the art might be, it is still the case that boards of trustees and senior administrators cannot escape the use of some indicators of institutional health. It is the responsibility of the board of trustees to monitor carefully all institutional assets and liabilities and to be sure that they are receiving financial reports in an understandable form on a regular basis.

Similarly, trustees should have a clear grasp of certain trends within the institution to enable them to judge the institution's current and projected condition. Put simply, trustees have a duty to inform themselves about the institution's strengths and weaknesses so that they can work with senior administrators in a responsible, intelligent manner.[3]

Several case studies on college closings indicate that trustees were surprised by the college's financial crisis. These trustees did not receive, nor did they demand, trend line data, financial reports, and general status reports in a readily understandable form. Unfortunately, at some colleges there is a tendency for trustees to refrain from asking the "hard" questions. In his discussion of the Parsons College closing John Millett describes a not uncommon attitude:

> The lesson [from the Parsons College closing] may well be a dilemma: how to distinguish . . . leadership of integrity from . . . leadership without integrity. Discrimination between the two types of leadership may well be difficult, especially when particular audiences are hearing what they want to hear.[4]

Trustees have an obligation to the general public as well as to the community itself. The survival of an institution is not sufficient reason to

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[2]Minter and Bowen, *Independent Higher Education: Fourth Annual Report on Financial and Educational Trends in the Independent Sector of American Higher Education* (Washington, Association of American Colleges, 1978), p. 85.

[3]*Financial Responsibilities of Governing Boards of Colleges and Universities* (Washington, Association of Governing Boards of Universities and Colleges and the National Association of College and University Business Officers, 1979), contains perhaps the most useful discussion of college finances for Board members. Especially helpful are the "suggested questions" scattered throughout the text.

[4]John Millett, *Mergers in Higher Education* (Washington, American Council on Education, 1976), p. 84.

deceive prospective students about the quality or scope of the educational program which the college offers. Nor do the trustees perform any public service by allowing students to enroll in a college which seems likely to close before their course of studies is completed. Yet the difficulty lies in knowing *when* the breaking point has been reached. As one trustee remarked, "This college has been in financial difficulty for 125 years. How am I to know that God won't provide and see it through yet another year?"

There is no accounting for acts of God. But a clear grasp of the real financial and educational situation of the college may give trustees some idea of how large a miracle they are asking the Lord to perform. There is one unmistakable sign of imminent financial death—the inability to borrow. But before that point is reached, trustees should be able to discern a series of "traps" or problems which lead to or are indicative of an on-coming financial crisis.

B. Three Typical Financial Problems

1. The Problem of Short-Term Debt

In preparing this sourcebook we interviewed six college presidents who were recently forced to close their institutions. In five of the six cases, the event which precipitated the closing was an inability to renegotiate their *short-term* debt. (Two of the colleges had been granted payment moratoria on their HUD loans and another had been given a similar concession by a state bonding authority. But public agency lenders are much less likely than banks and other private lenders to push a college into closing.)[3]

How was the short-term debt incurred? The standard scenario begins innocently enough. A small college with little or no endowment receives its income in "lumps" two or three times a year when students pay their tuition, but its operating expenses and payroll are paid out continuously. To smooth out the "lumpiness" in its cash-flow, the college borrows on a short-term basis to bridge the gap between the time of making payments to staff and vendors and the receipt of anticipated income from students. When the next registration period rolls around, the short-term note is paid off and the interest on the short-term debt is considered an ordinary cost of doing business.

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[3]According to a 1978 report to the Congress by the Comptroller General, *Problems and Outlook of Small Private Liberal Arts Colleges* (GAO, 1978), 93 colleges were at that time delinquent on HUD or HEW facilities loans. The number rose to 150 by July, 1980 *(The Chronicle of Higher Education,* July 24, 1980, p. 6.)

Borrowing against anticipated receipts is a legitimate and necessary means of conducting a college's business affairs. The practice becomes a problem only when there is a shortfall in anticipated income. If student fees, alumni giving, and other gifts and grants do not meet budget projections, the short-term loan meant to bridge the gap between, say, mid-summer and fall registration cannot be fully repaid. The college then is obliged to borrow from endowment or, if there is no endowment, to renegotiate the loan and stretch out the payment period. A short-term loan that began as a legitimate exercise in cash-flow management suddenly becomes additional interest and principal payments for the following year's budget. Even worse, these are liabilities which have no corresponding income-producing assets to offset them.

In a school with little or no endowment, an accumulated deficit of this kind cannot be sustained for long. In a study of five closed colleges, John Millett found that three years of such deficits proved to be the limit for each of the institutions studied.[6] Even when a college is able to make payments on interest and principal of its short-term debt, its ability to incur further short-term debt for cash-flow management may be severely limited. In times of high interest rates or during a credit crunch banks may be unwilling to renegotiate or rollover existing debt. If the college is unable to find another lender, it may be forced to liquidate assets.

The characteristics of the short-term debt trap have been described by Joseph Kershaw in his study of three very small colleges.[7] The factors mentioned in this study are common to other studies:

1. All three colleges had recently developed deficits which ran as high as 10 percent of their educational and general income and which threatened to become larger in the near future
2. In each case the deficits developed because income remained almost steady—largely because enrollment declined about as much as tuition charges rose—while expenditures continued to climb
3. Each of the colleges drew up plans to reverse these trends by increasing both enrollment and the flow of gift income
4. All of the colleges studied hoped to avoid laying off faculty but made contingency plans to do so anyway
5. Deficits were financed by borrowing and debt service became an important element in the budget.

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[6]Millett, *op. cit.*, p. 75.

[7]Joseph A. Kershaw, *The Very Small College: A Report to the Ford Foundation* (New York, The Ford Foundation, 1976), pp. 9-10.

The ability to avoid short-term debt largely depends on accurate income projections. Unanticipated expenditures due to inflation or sudden shocks such as large, unexpected increases in the price of oil may unbalance a budget, but the usual cause of a deficit of small private colleges is a short-fall in expected income.

2. The Problem of Inflated Income Estimates

The income side of a small college budget tends to be more volatile than the expenditure side. While 70 to 80 percent of the expense budget may be dedicated to the payment of salaries, debt service, and other expenses set by contract, the income or revenue side of the budget is necessarily based on estimates derived from the past few years' experience with student enrollment, alumni giving, federal and state grants, contributed services, and other forms of gifts and bequests. In other words, income estimates are, at best, informed guesses, even when they are derived from trend-line data.

In a tuition-dependent college trustees should devote at least as much attention to the income side as to the expenditure side of the budget. Probing income estimates is not a simple exercise. Since the income estimate is sometimes based more on a staff member's "feel" for a reasonable outcome of his or her efforts than on any hard data, a trustee may be reluctant to question the staff's professional judgment. Nonetheless there are some items which trustees may find useful to put to the test to ascertain if an income estimate is "softer" than it should be.

A. Probe Enrollment Estimates

Stable enrollments do not necessarily mean stable or improving financial health in a tuition-dependent college. A stable full-time equivalent enrollment (FTE) figure may hide changes in the college's drawing power, in the composition of the student body, or in the cost of enrolling those students. There are several questions which trustees may reasonably ask about the impact of enrollment on the college's financial health.

1. Is apparent enrollment stability the result of attracting more evening or part-time students? In an historically residential college, a shift to part-time enrollment may mean fewer students in the dorms and lower utilization of food service and student union facilities. Thus debt service for these buildings would remain constant while revenue from room and board declines.

2. Is enrollment stable because the college is accepting a large number of less-qualified students? The cost of remedial services is generally higher for such students and, if the college does not provide adequate (and expensive) counseling and remedial services, their drop-out rate will be higher.
3. Is the cost of recruiting students stable or increasing? What proportion of the revenue derived from the incoming freshman class was spent in recruiting them? Minter's data[8] on increasing admissions costs at a sample of 34 private Liberal Arts II colleges is instructive: In 1974-75 these colleges employed an average of one admissions staff person for each 71 students recruited. In 1977-78 the competition for students had increased so that the yield ratio had declined to 62 students for each admissions staff person employed.
4. Do transfer students make up an increasing proportion of new students? This can hide a poor retention rate.
5. Has the closing date for applications moved closer and closer to the registration date? If so, this could be an indicator that the institution has enrollment difficulties.[9]
6. Are full-time students registering for smaller average course loads? If tuition is charged on a credit-hour or course basis, income will decline with smaller loads even though the full-time headcount remains stable.[10]
7. Are enrollments in popular degree programs beginning to show smaller increases or actually decline? A drop in the *rate* of enrollment in a recently popular program is a warning that the college's drawing power may be on the wane. Creation of a new degree program is unlikely to reverse such a trend in the near term. Student interest in a new program must be built up over time.[11]

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[8]Minter, *op. cit.*, p. 15.

[9]Adapted from Glenny and Bowen, *Signals for Change: Stress Indicators for Colleges and Universities* (California Postsecondary Education Commission, 1979).

[10]It is not unreasonable for a trustee to ask for comparative year-to-year data on the college's total credit hour production, *i.e.*, the number of students enrolled in each course multiplied by the credit value assigned to that course. Since dollars and credits are directly linked, a change in credit hour production is a much more reliable indicator of a change in income than headcount enrollment.

[11]Glenny and Bowen, *op. cit.*

B. Understand Definition of "Hard" and "Soft" Sources of Revenue

The income budget should clearly distinguish between revenues which are "hard" because they are recurring and do not change markedly from year to year and those which are "soft" or non-recurring, such as grants and contracts.[12]

It is not enough however, to distinguish between "hard" and "soft" *sources* of income. It must also be clear whether "soft" income supports an essential service or function which the college would be obliged to support out of current income if the grant were terminated.

Some colleges fund a large part of their remedial and counseling services from "Trio" grants. Others balance their budgets with "Title III" grants (federal aid to developing institutions). These grants are often large enough—in the $100,000 to $200,000 per year range—to constitute a significant proportion of a small college's budget. Dependence on such grants to support essential services poses serious problems. For example, when Southern Benedictine College's Title III grant was not renewed in the summer of 1977, the college announced less than six months later that it was closing. One reason for the closing was an inability to "make up" the lost grant income.

Federal and state grants are obviously useful. But if they are used to *support* essential services rather than *supplement* them, the college's long-term viability is placed in jeopardy. A trustee can reasonably inquire if funds can be found to underwrite grant-supported activities if the grant is not renewed.

C. Analyze Estimates of Enrollment or Alumni Giving

Some financially-troubled colleges play out an increasingly standard scenario: As trustees and administrators realize that only heroic efforts will keep the college afloat, short-term, *ad hoc* solutions are proposed. Plans are developed to increase both enrollment and alumni giving dramatically over one or two year periods. And those income goals are written into next year's budget as if they had already been realized.

Wilson College, for example, at one point presented its trustees with a budget which projected that almost half of its operating income would be

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[12]Most income is generated from tuition and fees. If enrollment predictions are accurate or at the least based on historic trends, this income source might be treated as "hard."

derived from gifts received.[13] Even if the estimate had been met, such an unusual level of giving probably would have constituted a "borrowing" from alumni gifts in future years. In the long run, it is a sustainable level of giving rather than one-time effort that is important.

A similar judgement can be made about heroic efforts to increase enrollments. A sharp increase in one year's freshman class is not enough to restore the college to financial stability. As a prudent rule of thumb, any projected increase in alumni giving or student enrollment which exceeds the historical trend by more than 10 percent should be discounted as too "soft" to be included in the budget.

D. Factor Student Attrition into Revenue Estimates

In a recent survey of 42 small private colleges, it was found that on the average 36 percent of the freshman class did not return for the sophomore year. Revenue estimates which do not include an attrition factor for those who drop out before the beginning of the second semester *and* for those who do not return for sophomore year are clearly misleading.

Estimates of revenue from students should also distinguish between attrition rates for residential and non-residential students. The drop-out rate among residential students has a much greater impact on the flow of revenue due to its impact on such items as food services contracts and income from dormitories.

E. Properly Estimate Income from Contributed Services and Sponsoring Organizations

Traditionally Catholic colleges, especially those conducted by religious orders of women, often maintain their financial stability through the contributed services of members of the order. In at least two closings the legal and emotional separation of the religious order from the colleges it sponsored seems to have played a role in the colleges' demise. The shift from religious to lay administration at Newton College, for example, was marked by decreased financial flexibility: The ability to borrow was restricted because the order was no longer seen to be a ready guarantor of

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[13] A. Beeman *et al., Wilson College: A Case Study* (Indianapolis, Lilly Endowment, Inc., 1979), pp. 16-17.

National norms as computed by Minter and Bowen show that a reasonable expectation for direct gifts is in the range of 5 to 15 percent of the Education and General budget *depending on the type and history of alumni giving.*

debt; gifts in contributed services or cash from the order tended to decline; and the emotional attachment of the alumni, which identified as much with the order as with the college, was diluted.[14]

When making short-term budget estimates or longer term plans, trustees should know:

1. How many members of the order are likely to contribute their services to the college over the next few years?
2. Is it reasonable to expect the order or religious body to continue its financial support, loan commitments, and so on at the same level over the next few years?
3. If contributed services or financial support are likely to decline, how will they be replaced?

3. The Problem of Critical Mass

In a recent study of college mergers and closings, John Millett of the Academy of Educational Development remarked:

> Enrollment size as such did not appear to be the controlling factor in the closings. Enrollment decline was the cause of the disaster. No matter how small or how large, when a college begins to lose enrollment, it begins to experience financial and management problems.[15]

The qualifiers "size as such" and "controlling factor" are important ones. Millett's argument is that colleges get into trouble because in a period of declining enrollments they cannot reduce expenditures as quickly as their income falls. But there is also a very real sense in which the absolute size of a college is a factor in making the decision to close. Consider the following:

> In the decade 1970-80 in which 141 private colleges closed, 87% of them had an enrollment of less than 500 FTE when the closing actually occurred.[16]

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[14]Walter Borton, *The Newton College Consolidation,* unpublished manuscript, pp. 113, 116ff.

[15]Millet, *op. cit.,* p. 83. *The New York Times,* January 4, 1981, reported that students at Colorado Women's College brought suit against the college, alleging that the reduction of faculty to a total of ten prevented the college from offering the full range of courses required for their programs.

[16]*The Chronicle of Higher Education,* June 30, 1980.

> A college's ability to fulfill its stated mission is dependent on the size and diversity of its faculty. In many very small colleges departments are often made up of two—sometimes only one—faculty members. A decline in enrollment means not merely a lower student-faculty ratio, it may mean the elimination of a subject matter area as well.
>
> Accrediting agencies (especially professional education accreditation groups) and state departments of education may prescribe in their guidelines a depth of faculty which the college can no longer afford as absolute size reaches a certain critical stage.
>
> With declining enrollment junior faculty are often let go. This can result in a higher cost per FTE enrollment because more senior (and usually better paid) faculty are teaching more courses.

If, as a college shrinks, it is forced by contract or practice to let go the most recently hired faculty, it can find itself in the intractable position of not being able to staff newer, market-responsive programs.

In theory a college could shrink in absolute size until, like the Cheshire cat, it disappears. In fact there is a core of expected or state-prescribed services which every college must render to the students whom it recruits. The maintenance of that core of services requires some absolute number of tuition-paying students. As Kershaw remarks:

> A research university whose enrollment somehow went from 30,000 to 15,000 (assuming it could make all the necessary adjustments) would still be a research university; it is impossible to believe that any of our three institutions could exist at half their present size even though the largest would still be larger than the smallest is now. This is a subjective point, but it seems clear, at least, that at some stage cutting back becomes self-defeating according to any criterion, and small colleges must be closer to that point than large universities.[17]

Efforts to increase absolute size usually focus on recruiting adult students into evening and weekend programs, introducing more career-oriented degree programs into the curriculum; and recruiting "marginal" students *i.e.*, ones with lower than accustomed standard test scores. Each of these strategies carries its own price tag and should be examined carefully.

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[17]Kershaw, *op. cit.*, p. 18. Some colleges try to increase enrollment with an influx of foreign students. This strategy has had mixed results at best. Foreign students may require a large commitment of support and academic services. This commitment might cost more than the income it produces, thus defeating its purpose.

1. The least expensive strategy appears to be to increase evening or weekend enrollment. These programs use adjunct or part-time faculty or faculty on over- or underloads. This can reduce costs to almost one-third of those in the regular day program. However, while the immediate returns from such programs are often quite gratifying, the longer term cost is that the institution must usually promise that it will offer evening students the entire range of upper division courses which they require for the completion of the degree. One small residential college tried to solve this problem by offering most of its upper division courses in the evening. This caused a severe negative reaction from the college's full-time day students. One young woman remarked: "My father is not paying this kind of money for me to go to night school."

2. A second strategy is to implement new programs. Career programs (*e.g.*, computer science, secretarial studies, allied health technology, etc.) usually require more equipment and more lab space than those in the liberal arts. Library collections have to be built up and the physical space dedicated to career programs is less easily used for other courses than a general lecture hall would be. Some programs such as nursing require a low faculty-student ratio. Further, in any career program for which there is high demand, faculty compensation may have to be higher than usual to attract good people.

   In a college where enrollment is declining, trustees may reasonably ask where the initial capital for new staff and equipment is coming from and what other academic areas are to be cut to accommodate the new program.

3. By recruiting less qualified students, whether from home or abroad, the college implicitly promises to provide those remedial and language courses which less well-prepared students require. If they come from lower income families, more college-based or unfunded aid may be required to meet their financial needs. Again, trustees may well inquire where staff and resources are to be found.

Each of these strategies, and others which have been proposed, must be examined in detail. Each of them contains hidden costs which might make the strategy more costly than helpful. Again, it is the trustees who must be prepared to help administrators think through the effects of new programs.

Options For Collegiate Corporate Change

2.

> Property committed to charitable purposes shall not . . . be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order . . . specifying the disposition of the property.[1]

Trustees who have serious doubts about their college's long-term financial viability may wish to consider some form of major corporate change. Merger, consolidation, federation, change of sponsorship, dissolution, and reincorporation are some of the options open to them. However, as the Wilson College case demonstrated so forcefully, the courts will hold the trustees responsible for weighing all the available options—and for documenting why they have chosen one option rather than another. This chapter provides a framework for trustees to analyze the advantages and disadvantages of several types of corporate change. The approach set out here can be used with more or less rigor according to the resources available. It may serve as a reference during a complicated negotiations process and help provide a record of trustee responsibility if needed. The first section outlines the options available for corporate change. This section is followed by a general model for evaluating the options which an individual institution finds available to it.

A. Types of Collegiate Corporate Change

Trustees will want to examine a variety of options from the point of view of their desirability, feasibility and suitability as long-range solutions to the

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[1]Section 7549(b) of the Pennsylvania Corporation not-for-profit code. A state-by-state summary of such codes is given in Appendix 2.

institution's problems. Not all the options listed below may be feasible in the present economic climate. Some may provide only temporary solutions which could distract trustees from the task at hand. A range of options are included for completeness, but the focus will be on those kinds of corporate change most likely to be undertaken by the financially distressed institution.

Consortium

A consortium is a joint venture between two or more colleges. The agreement to cooperate is usually limited to certain narrowly defined academic or administrative areas. The Five Colleges, Inc. in Massachusetts, for example, provides an inter-campus bus service, inter-college registration and some joint academic programs for five institutions in the Amherst area. Other consortia have established joint admissions programs to recruit out-of-state students (Consortium of Vermont Colleges) or joined in the production of television courses (The University of Mid-America). Members of such consortia assume financial responsibility *only* for those activities which are specified in the joint venture. Ordinarily membership in a consortium does not imply financial support for the broader institutional goals of other member colleges. Consortia are especially useful as vehicles for academic flexibility. For example, several colleges in concert can offer a program in marine sciences that would be far too expensive for any one institution to mount. But because of the limited nature of the commitment, membership in a consortium is unlikely to be the answer to severe financial or management difficulties.

Federation

The term "federation" denotes an arrangement in which two or more institutions retain their corporate identities but agree to surrender to a central administration a measure of autonomy in the overall management of the combined institutions. A federation is, at least in name, a compact among equals. Since it involves a surrender of autonomy rather than of corporate identity, the academic structure of federated institutions tends to remain intact. Federation tends to work best where institutions complement rather than duplicate one another's offerings. In the arrangement between Parsons School of Design and the New School for Social Research in New York City, for example, the affiliation was so complete that the two institutions became, for

all practical purposes, a single unit. Yet each institution retains its charter, continues its separate academic programs, preserves its mission, grants degrees and maintains separate accounts for all revenues and expenditures. This federation was accomplished by having each board approve a very brief contract, less than one page, indicating that the Parsons Trustees agreed that the Trustees of New School would be appointed as their replacements on the Parsons Board.

Affiliation

Affiliation describes two "related" organizations. The varieties of affiliation are so numerous that they can be described only in the most general of terms. The most common type of affiliation is that which exists between a church body and a college it sponsors. The church or religious order often acts as a guarantor of debt and is usually named in the articles of incorporation as the receiver of assets upon dissolution of the college. A "change of affiliation" occurs when:

> A college names in its charter a new sponsoring organization or disaffiliates itself from an old one, and when
>
> A college changes the terms of its charter dissolution clause to add or delete the name of a recipient of assets which survive dissolution.

Quasi-Public Status

Two states currently have mechanisms which can be used to substantially underwrite expenses of institutions which remain private. In Pennsylvania the amount of funding and accompanying controls essentially make such institutions "instrumentalities of the state." New York's statutory colleges, on the other hand, were established as part of a land-grant movement which developed public units within private universities. Although no institution has yet made use of its provisions, the New York statute would allow one unit of private institution, such as a high cost medical school, to be transferred to public funding and control while the remainder of the institution kept its private status. Neither of these plans was designed as a system of relief for troubled colleges, but they could be used as such in these two states and perhaps elsewhere.

Merger

The term "merger" connotes a combination of two or more institutions into a single one. Depending upon the law of the state, this can be done in the following ways:

> In a *consolidation* merger, two or more corporations dissolve their respective legal identities and become a wholly new corporation carrying forth all the properties and obligations of the former corporations.
>
> A *dissolution/acquisition* merger involves an agreement under which one institution is legally dissolved and its assets and liabilities are acquired with court approval by the surviving institution.

Merger is the most complete form of inter-institutional change because it involves a legal action whereby two or more corporations become "one." Other forms of cooperation such as consortia or federations are either contractual or consensual arrangements which do not touch the legal identities of the colleges involved.

Transfer of Program Ownership

The previous descriptions of change of ownership define relationships between two or more corporations. Program transfer refers to the process in which an operating (but non-corporate) unit of one college is merged into another college or university. For example, when Franconia College in New Hampshire closed it transferred an entire operating unit—faculty, students and funds—to New Hampshire College. In a similar fashion, when Immaculate Heart College in Los Angeles closed it transferred its bilingual program, including funding, to Loyola Marymount University. Neither transaction was a sale. No cash exchanged hands. Nor was it a gift since permission of the funding agency was required to effect the transfer. The strategy of program transfer may be an important way to protect faculty and students in a college which cannot survive as a totality but whose several parts may complement the operations of other institutions.

Viable programs are not corporate entities and they may not in law be transferred to another institution at the whim of the personnel managing them. In law, such programs are the property of the college and are considered collegiate assets. As property of value to the college they may be transferred to another institution only through proper board and/or administrative action.

Sale

A sale is an *exchange* of assets, usually with cash as the medium of exchange. The sale of an entire operating college to another institution is a rare event. A more common happening is the sale of an operating unit: Unity College (ME) purchased Ricker College's network of adult education centers. The sale of a viable program is a varient of a program transfer.

Bankruptcy

The possibility of reorganization under Chapter 11 of the Bankruptcy Code is discussed in some detail in Chapter 4 of this sourcebook. It is useful to note here that the filing of a Chapter 11 petition has many of the effects of creating a new corporation. During the period of court protection the college is required to pay on those obligations which were incurred after the filing and separate books must be kept for the period in which the college operates under Chapter 11. Bloomfield College (NJ) was successful in using bankruptcy as a means of reorganizing itself. However, not all colleges have the assets — a golf course in Bloomfield's case — to use Chapter 11 successfully.

Dissolution and Reincorporation

If the trustees of a college are contemplating a significant change in mission or moving the college from one state to another, it may simplify matters to dissolve the present corporation and reincorporate to serve the new mission or locality. Marylhurst College in Oregon decided to focus on the adult part-time student rather than on the traditional 18-22 year old student. To gain flexibility it dissolved its corporation and reincorporated as Marylhurst Education Center.

Closing

This form of corporate change is discussed at length in Chapter 6 of this sourcebook.

B. Preparation For Corporate Change: Choice and Use of Legal Services

Colleges often wait until negotiations are about to begin before seeking advice of counsel. In many instances it is then too late to effect an orderly change in the charter, review gift and deed restrictions, or identify questionable inter-fund borrowing. Any such problems which have gone unattended will bubble to the surface to be negotiated in less-than-favorable circumstances. If the college has engaged in questionable financial practices or if its personnel policies lack clarity, any major institutional change will be that much more difficult to implement.

If a college has not previously had a close working relationship with an attorney, counsel should be engaged as soon as the board contemplates any form of corporate change. Advice of counsel is essential if the board is to fulfill its statutory and fiduciary responsibilities.

Advice of counsel on a continuing basis and in the early stages of planning for closure or merger will allow an institution to enter negotiations better prepared to understand and to anticipate most eventualities. Counsel will then be familiar with the range of issues which surround major corporate change. Counsel's first priority at this juncture is to provide for the college an assessment of the legal implications of:

1. State law and charter provisions
2. Contractual obligations which may impede the change
3. Board actions which might be required to implement the proposed change
4. The data needed to implement the legal requirements of such change
5. The final document that governs the institutional change, *e.g.*, the merger instrument, the motion of dissolution, or the appeal for court-assisted reorganization.

Private practitioners, whether individuals or firms, normally charge for their work on an hourly basis. An attorney may bill a college at a favorable rate, particularly if the work is done by someone who has a long association with the college. Hourly rates vary depending on the type of work (general or specialized) and the geographical location (and typically range in 1980 from $50 to $75 per hour).

Use of Donated Legal Services

Colleges in financial distress often try to get by with the donated legal services of a board member or friend of the college. With the use of unpaid counsel the college cannot demand service when it is most needed. Direct expense for preventive advice of counsel should be viewed in the context of potential long-range liability. Unfavorable court judgments, adverse settlements and taking unnecessary risks due to lack of legal advice can be quite expensive. Another important consideration is the cost of protracted conflict and litigation in terms of time devoted by college administrators that might otherwise be channeled into more productive activities. Damage to campus environment and institutional image and potential effect on fundraising are other issues to be considered.

C. Evaluating The Options

In section A of this chapter, ten options for collegiate corporate change were presented. There are other options as well, but they do not involve *corporate* change, *i.e.*, they do not require modification of the college's charter. Some of these options include developing new market techniques, changing curricula, introducing new programs, and reorganization and restaffing to mention just a few.

Fortunately or unfortunately, there is no lack of ideas for change, although change itself may be quite difficult to accomplish. From the trustees' point of view, and from the point of view of top-level administrators, there are three questions to be dealt with before all others:

1. Will a proposed change enable the board to fulfill its legal obligations to the institution?
2. How much—if any—control will the board retain over assets originating in its institution? If no control is retained, can the board legally transfer control and use of the institution's assets according to the proposed plan?
3. What risks are involved in effecting the proposed change?

Decisions with regard to corporate change *must* be made with these questions in mind. But such decisions will not be made in reality with *only* these questions in mind.

In real life decision-making is not purely rational. Preconceptions, prejudices, values, past experience, guesswork, and personal style all contribute to the decisions people make. Each board member is likely to have a slightly different way of arriving at decisions from those of his or her colleagues. One trustee may favor a particular solution based solely on retaining the college's religious affiliation. Another might see an entirely new mission for the college. A third might want to make the soundest business decision. A fourth might be concerned with the academic traditions of the college.

A decision by the board itself will start with its members' individual differences and preferences. From these, and based on the determination that corporate change is necessary (if not desirable), the board must begin to examine the options in front of it realistically. To do this, the board needs several different types of information:

1. What would I, as an individual board member, prefer to have happen?
2. Does a given option meet the college's six obligations? These obligations are:
   a. Fiduciary obligations to donors
   b. Obligations to debtors
   c. Contractual and moral obligations to students
   d. Contractual and moral obligations to staff
   e. Obligations to alumni and alumnae
   f. Obligations regarding physical plant
3. Does a given option provide for the continuation of the college's mission? If not, should the option finally chosen do so?
4. Will the board continue to have obligations of any sort once the option is undertaken?
5. What legal resources are needed to implement the option?
6. What financial resources are needed to implement the option?
7. What personnel resources are needed?

Any option must be evaluated in the light of each of these questions to avoid a precipitous or ill-considered decision. Since many of the options listed in section A involve negotiations with other organizations—colleges and/or courts—decisions regarding which options to pursue must be made only after careful fact-gathering and analysis and only if the option chosen is allowable and stands a reasonable chance for success.

Merger: Advantages and Disadvantages

3.

Merger is an attractive concept for a small, struggling college. Union with a stronger institution seems a reasonable way for a board of trustees to fulfill its fiduciary responsibilities. Continuity in education and employment may be provided to students, faculty, and staff; assets and student records will be protected; and so on. However, the reality of a merger may turn out to be less attractive than surface appearances would warrant. The purpose of this chapter is to review from the point of view of a financially troubled institution the advantages and disadvantages of merger with a stronger institution.

In some cases, merger has all the advantages mentioned above. The merger between Case University and Western Reserve University, the takeover of Briarcliff College by Pace University, and the creation of the University of Missouri at Kansas City by the State's takeover of the University of Kansas City appear to have been successful mergers.

Yet, there are other cases in which things have not gone so well. Sometimes the merger did not work out exactly as expected by faculty and staff: The Newton College of the Sacred Heart—Boston College merger and the Miami University (OH)—Western College merger are cases in point.[1] Sometimes the proposed merger simply never was accomplished as was the case with the merger of Dominican College of Blauvelt and Saint Thomas Aquinas College in New York.

There are also instances of a proposed merger being rejected. Dropsie University in Philadelphia could not find a partner for merger which would sustain Dropsie's unique heritage and mission. Ladycliff College in New York closed before a merger with Iona College could be properly studied.

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[1]Cf. John Millett, *Mergers in Higher Education*, (Washington, American Council on Education, 1976), *passim*.

A. Viability Of A Merger

The board of trustees which is seriously considering approaching a potential partner in merger must be aware of and critically assess its own attractiveness and the liabilities it brings as a merger partner. For a private college, the problem is that of matching what it has to offer to an institution with a strong enough market position (or the need to change its market position) so that the merger is seen to be of value to *both* partners in merger.

This problem is analogous to the marketing function of profit-making industries. In the profit sector of the economy an industry and its competitive strategies are often characterized by the marketing "position" of different corporations: Leaders such as General Motors or IBM set the pricing pattern for the rest of the industry; challengers like Ford seek to displace the leaders; followers like Chrysler do business under the conditions dictated; and nichers seek out markets too specialized or too small for the others to occupy. Ten years ago the higher education industry could have been characterized as consisting of a few market leaders (Harvard, MIT, etc.), some challengers and some specialists, along with a mass of institutions content to follow a pattern of "conscious parallelism" rather than compete.[2]

As long as the higher education market was expanding, most colleges were content to follow the patterns of pricing and financial aid set by the lead institutions. In most states there was also some sense of "territoriality." One college would not establish a program which directly competed with a well-established program of another institution in the same area. But recently, as competition for students has become more intense, the rules of the game have become more fluid. Uniform prices give way to discounting. Evening programs for adult students spring up in one's backyard. And such disputes among colleges are no longer settled informally. Lake Erie College, for example, recently sued Cleveland State University for "illegal encroachment" when the university opened a graduate program in the same small town where the college already provided similar courses. The college lost.

This new climate of competition is likely to affect merger negotiations as well. When two institutions of unequal bargaining power enter merger negotiations, the junior partner would do well to set aside the collegial image of inter-institutional cooperation, and think instead of the business arrangements which might prove workable given the devalued worth of its assets.

Experience shows that administrative staffs of small colleges often enter

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[2]Philip Kotler, *Marketing Management*, Fourth Edition. (Englewood Cliffs, Prentice-Hall, 1980), p. 285.

negotiations with neither sharply defined goals nor a strategy for negotiation. As a result they are unable to protect the interests of the institution and its students, faculty, and staff. For example, a review of four recent mergers between institutions of unequal size and resources shows that:

— Job protection for the faculty of the smaller college did not last for more than two years.

— Students from the smaller colleges were in two instances given no real priority for transfer, nor were they able to transfer all their credits to the other institution.

— Clerical and maintenance staff were much more easily absorbed by the other institution than were professional administrative staff.

The combination of unequal bargaining strength and lack of planning can lead to disastrous consequences for the smaller institution. One clear example of this was the Western College-Miami of Ohio merger. What had begun on one side as a merger with planned absorption of Western's faculty and staff became largely a purchase of property. As John Millett described it:

> Western College faculty and students expected Miami University to take over the college and to continue to operate it as it was then functioning . . . This perception within Western College was entirely erroneous . . . A year spent in arranging details convinced Miami University that it alone was in a position to pay off the (Western) College creditors, and that it had to make few if any concessions in the process.[3]

B. Preparing For Negotiations: The Key Negotiating Points

Inter-institutional agreements are rarely reached without some struggle on both sides. Sore points tend to be the transfer of faculty, students and staff, and the shift of academic control from the smaller to the larger partner. The number of faculty jobs offered to the smaller partner is almost bound to be a source of disenchantment. The survivor institution in a time of declining enrollments will be extremely cautious about overstaffing. Nor will it

[3]Millet, *op. cit.*, pp. 40-42.

ordinarily be able or willing to let any of its own faculty go in order to accommodate the faculty of its partner.

The interests of students from the absorbed college or program are equally at stake, especially if academic standards, teaching methods, or learning atmospheres are notably different. Negotiations should define the rights of students with regard to:

- Granting priority of admission into the survivor college
- Mechanisms which assure fairness in the transfer of credit when the larger institution has different degree requirements or prerequisites for choice of major
- Some remedy when tuition at the surviving institution is notably higher or financial aid packages less attractive
- Continued maintenance of scholarships, whether athletic or academic, until the student graduates.

A primary reason for a strong school to enter into an agreement with a weaker one is to achieve economies of scale. If the survivor college can acquire the student body and good will of the distressed institution at the cost of only a few new hires, its financial position will be considerably strengthened. On the other hand, if the agreement means acquiring a duplicate set of administrators from the absorbed institution, the merger is less likely to be undertaken. The strategy of the stronger school must be to maximize its ability to serve social needs by securing enrollment increases, energy-efficient facilities, property, and endowment while minimizing such liabilities as debt, tenured faculty who duplicate rather than complement existing strengths, energy-wasteful facilities, etc.

The strategy of the weakened institution should be to present a package of both assets and liabilities so that it can, at least in part, fulfill its obligations to students and faculty. The key to a package proposal is estimating what value the other institution will place on the assets to be gained and how that institution will respond to the risks involved. Before opening negotiations each board would do well to require a detailed feasibility study of their most favored option.

A strong institution considering association with a weaker one will be concerned with the effect of a merger on its financial health and academic quality. Questions of academic program, faculty quality, and reputation can be resolved only after it is clear that a merger will not hurt the stronger institution financially. The "bottom line" will be the first consideration of a responsible board. Of the options most likely to be available to the truely distressed

institution, an acquisition merger may be the most attractive. The financial discussion which follows focuses on this option but illustrates an approach which can be used to evaluate other possibilities as well.

Financial Basis for an Acquisition Merger

Merger negotiations must be conducted in such a way that both parties are dealing at arm's length with one another and that neither party is exceeding its legal power and authority. As a first step, the institutions will have to identify all parties with a legal interest in the negotiations and obtain permission from any regulatory agency such as a state board of higher education. Negotiations will seek combinations of monetary and other values that will be feasible and desirable for all parties. The courts in reviewing such an agreement would be concerned that all interested parties were informed and had agreed to the final outcome. The college would have to show that all legal obligations—including fiduciary ones—were met. Before negotiating an agreement, then, a feasibility committee should take into consideration the interests of all parties who have a financial interest in the outcome of a merger or dissolution. In simplified form these parties can be represented by: 1) The distressed institution; 2) the set of all its creditors; 3) the stronger institution (and possibly some of its creditors); and 4) any public agency whether in the executive or judicial branch which is charged with protecting the public interest.

Each of the above parties may ask different financial and legal questions when reacting to a proposed merger. The strong institution will wonder whether other investments may be a more appropriate way to meet its academic goals; what concrete use can it make of the weaker school's assets and how these different uses would alter value for the acquiring institution; what outside factors might affect the past merger plans and projections. Creditors (and government agencies acting as creditors) will have more profit-oriented concerns: If our original credit agreement fails, what will we get paid and how might the proposed merger alter that figure; for what price and privileges would we be willing to accept the new arrangement? The government agency will ask cost-benefit and political questions: What will be the net social benefit of the options available; are there any so negative as to justify interference; which ones will be feasible in the state's political and economic climate? As a result of these independent deliberations, each party will bring into the negotiation process a set of expectations and uncertainties which will determine whether or not there will be an agreement. By considering what these concerns will be, the feasibility committee can estimate whether or not

some conjunction of interests is possible and what the topics of negotiation will be.

There is also a secondary set of parties who do not directly take part in the negotiations but whose interests and financial impact may be decisive. The stronger institution, because it may rely on gifts and grants to balance its budget, must consider how the proposed corporate change will alter cash flows from donors, existing contracts, and government subsidies. As a weaker institution is merged into a stronger one, the new combination may attract donors who had previously hesitated to give their support. Or the proposed merger may so confuse the image of the surviving institution that former friends no longer see it as serving their needs. A merged institution which proves successful in other regards may discover that a few minor adjustments such as name or board membership may have a distinct impact on future gifts. Creditors can occasionally be encouraged to make "contributions" in terms of bargaining concessions rather than incur the ill will of those who are interested in keeping the distressed institution alive in some form or other.

Negotiation Plans

Three final issues need to be settled before opening negotiations. First, the board must decide whether to explore several promising options simultaneously or sequentially. Time pressures may force simultaneous efforts even if they are not preferred. The confidentiality with which matters are handled may allow for this and even suggest its strategic use. Out of courtesy for the efforts invested by negotiating partners, however, some indication should be given that simultaneous talks are being undertaken. Stronger institutions realize that the trustees of a troubled school have an obligation to pursue more than one resolution; the stronger school may, in fact, feel more comfortable knowing that this is happening.

The second question is whether to set out all firm conditions early in the negotiations or to "roll" them out in various packages as discussions progress. Experienced negotiators point out that the former approach may help prevent a breakdown in talks after months have been invested.[4] Such breakdowns can occur anyhow, however, because an issue settled early in negotiations can become insurmountable when the full dimensions of the undertaking become obvious. In the recent negotiations (1978-79) between Iona and St. Thomas Aquinas colleges in New York, for example, the intention of board dominance

[4]John R. Haines, Correspondence, October, 1979.

by Iona was stated early but eventually proved too large a concession for the Aquinas board to make. The alternative approach is to start with some package which the feasibility committee feels will represent a viable financial arrangement and includes some items of minimal cost to the stronger institution, plus others which will be costly but not enough so to halt their discussions. This will allow room to add or remove items as the two boards and their counterparts move toward an understanding of their respective needs and mutual opportunities.

The last question is who should represent the institution in the bargaining process. Clearly the school's attorney should be part of the team. Others could be drawn from the feasibility committee or the board's executive committee and may include an outside negotiating aid. For simultaneous negotiations, it may be best to use the executive committee in order to provide for central comparison of the options as they develop. If board members can supply the time and talent needed, administrators should be used for information and analysis only. It may even be better to draw on help from outside the institution rather than to involve administrators where they have a real or apparent conflict of interest. Whoever is chosen, it should be realized that the process will be a long one—six months is not uncommon. It will involve enormous amounts of work, time, tact, and wisdom. It may also be one of the most important contributions institutional leaders can make to a history of charitable work.

Bankruptcy As An Instrument For Reorganization

4.

In the public mind bankruptcy is usually equated with going out of business. And, indeed, in a majority of instances that perception would be correct. In a "straight" bankruptcy case where a debtor cannot or will not pay his debts, the court takes possession of the debtor's property (with certain statutory limitations) and, upon sale, distributes the proceeds on a *pro rata* basis to the creditors. Then the court usually discharges the debtor from his liabilities enabling him to start anew. But in addition to the usual bankruptcy proceedings of liquidation and distribution, the federal bankruptcy code also provides a rehabilitative process in which the court protects a corporation from its creditors while the corporation reorganizes its affairs.

The rehabilitative aspect of the Bankruptcy Act was introduced by Congressman Walter Chandler in 1938. Passed by the Congress in the twilight of the Great Depression as Chapters X, XI, XII, and XIII of the Bankruptcy Act, the Chandler amendments removed much of the "offender" onus of bankruptcy which still clings to it in English law.[1] Even more importantly, it provided a mechanism for a viable business which had incurred large debts during a period of difficulties to remain in business with court protection while it negotiated with its creditors for the satisfaction of that debt.

The Bankruptcy Reform Act of 1978, which went into effect on October 1, 1979 and is now being referred to as the "Bankruptcy Code," attempts to improve the operation of the bankruptcy laws. The Bankruptcy Code combines into Chapter 11 what was formerly found in Chapters X, XI, and XII of the Bankruptcy Act.

Bankruptcy law has evolved to a point today where its punitive aspects have largely disappeared and the law's main objective is to deal fairly with creditors while allowing the debtor to start a new financial life. But to avoid liquidation and to gain access to the rehabilitative processes of Chapter 11, the

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[1]A bankrupt, for example, is disqualified from being elected to or sitting in either House of Parliament. Cf. "Bankruptcy" *The Oxford Companion to Law* (Oxford, Clarendon Press, 1980), p. 111.

corporation must show to the court that it has both the management resources and the market potential to recover its financial health and pay off its debts. The corporation must submit a plan to regroup and reorganize its resources which, given sufficient time to effect a cure, will insure a reasonable chance of survival in the near term and stable financial health in the future.

Although seldom used by eleemosynary institutions, such as schools, churches, and hospitals, Chapter 11 is definitely available to them. The purpose of the following sections is to review the conditions, procedures, and effects of a Chapter 11 proceeding in a college or university setting.

A. What Chapter 11 Can Do

The Automatic Stay

During the period of crisis or reversal, the business (or "debtor") will fall behind in the timely payment of its debts.[2] By filing a voluntary Chapter 11 petition, the debtor obtains an automatic stay or injunction against all creditors who thereafter may not start or continue any suits against the debtor, nor may they make any further collection efforts without first petitioning the bankruptcy court for permission. In most cases the court will not grant that permission until the debtor has had a sufficient period of time to work out its problems and to offer a reasonable payment plan to all creditors.

The automatic stay is the most important element of the Bankruptcy Code. In many cases this is all that the debtor requires—the time to concentrate on present operations. During this time the debtor is expected to prepare a reorganization plan which includes a plan for payment of the creditors.

Continuation of Operations

During the period of the automatic stay, the debtor may continue to operate under court supervision. These operations may be conducted by the debtor itself (referred to as a "debtor in possession" or "DIP") or by a trustee appointed by the court.

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[2]Often some creditors will not wait for the debtor to pay those debts as cash flow improves. Individual creditors have the right to sue for payment. Any three creditors acting together may file an involuntary petition in bankruptcy against the debtor.

The filing of a Chapter 11 petition brings on many changes. While the debtor need not pay its pre-Chapter 11 debts, it must pay its current obligations. In a sense the Chapter 11 filing creates a new entity. Separate books must be kept for the Chapter 11 period. A creditors committee will be formed to supervise the debtor's operations and to negotiate a payment plan with the debtor. The committee has the right to apply to the court for appointment of independent accountants, appraisers, or other professional persons to help them assess the value of the business and whether it should continue to operate.

If the business continues to lose money on a steady basis, the creditors usually will ask the court to terminate operations. If the business is operating at a breakeven point or if slight losses are incurred with operations improving, the court will allow the debtor to operate indefinitely provided it keeps moving forward in formulating its plan for payment to creditors.

A trustee may be appointed by the court to assume operation of the business on application of any creditor. The court will appoint a trustee if there is cause such as fraud, dishonesty, incompetence, or gross mismanagement. The trustee may continue operations and may continue or terminate the employment of any personnel.

Financing the Chapter 11 Case

The initial stages of a Chapter 11 case are traumatic, not only to the debtor, but to the creditors as well. Creditors will be shocked and upset. They are prevented from being paid their previous debts. They will be extremely reluctant to extend new credit during the Chapter 11 period. This must be anticipated by a debtor prior to filing so that alternatives can be developed.

In some cases, outside financing is not required. The relief from paying old debts may allow a debtor to carry its new obligations on a C.O.D. basis. Moreover, after a brief period, it is not unusual for creditor confidence to be restored, and for the debtor to obtain credit during Chapter 11 on some modified basis. The Bankruptcy Code encourages creditors to extend credit by according to them a high priority in the event the Chapter 11 fails.

It is also possible to arrange financing with a bank or other lender. It is easier to arrange this financing with a lender who has previously financed the debtor, but it is not unusual to start up with a new lender who is familiar with Chapter 11 law. In either event, such lender will want its financing to be secured by adequate collateral. If the debtor has substantial assets with no prior liens or with minor liens against them, some type of financing will not be a problem.

Executory Contracts

An executory contract is a contract tying the parties to continuing obligations currently and for a certain period of time in the future. Executory contracts may include employment contracts, collective bargaining agreements, and equipment rentals. The Bankruptcy Code allows a debtor to reject (terminate) any executory contract or unexpired lease which may be onerous to the debtor. If such a contract or lease is rejected, the other party may be able to claim damages. These damages are limited by the Code and may be handled as part of the overall plan of payment when emerging from Chapter 11.

On the other hand, a debtor may have defaulted under such a contract or lease and would like to reinstate it. The Code allows a debtor to cure such defaults and reaffirm such contracts or leases.

Any provision to the effect that a contract or lease shall be terminated in the event that bankruptcy or Chapter 11 is filed, is nullified and is unenforceable.

The Chapter 11 Plan

Unless a trustee is appointed, the debtor has an exclusive period of 120 days to file a plan for payment of debts and if the debtor does file a plan, it has an additional 60 days to obtain acceptances. If no plan is filed within that period of time or if a trustee has been appointed, any third party may also file a plan.

If all the debtor needed was a period of time to work out certain problems or sell off certain assets, it is possible the debtor will pay all pre-Chapter 11 accrued debt and that will be the end of it. More often, however, the debtor will offer a plan which will include a composition of debt, an extension of debt, or both. In a composition, the creditors agree to accept a reduced percentage of their debts, usually paid in cash in a lump sum. An extension involves payment over a period of time after the debtor emerges from Chapter 11. For example, the debtor might propose as its plan to pay unsecured creditors 40% of their debts in cash when the plan is confirmed (composition); or 20% per year for five years (extension); or 20% in cash and 30% payable over three years (combination).

The payment plan to be presented to creditors is negotiated between the debtor and the creditors committee. Both sides arrive at estimates to the amount (or percentage) creditors would receive if the Chapter 11 failed and all

assets were liquidated. The debtor realizes that creditors will vote to accept the plan only if they will receive a greater percentage under the plan than they would receive through liquidation. If both sides agree that liquidation would yield 25% payment to creditors, it is fair, for example, to offer 40% in cash or 50% payable over three years.

Once agreement has been reached between the debtor and the committee, the debtor will draft the plan and file it with the court, together with a disclosure statement. The plan will set forth the proposal for payment to creditors. The disclosure statement should contain sufficient information regarding the debtor's affairs and finances so that the creditors can make an informed judgment about the plan. Thereafter, a disclosure hearing will be held in court. When the court is satisfied that the disclosure statement contains adequate information, acceptance of the plan may be solicited.

The debtor then mails each creditor a copy of the plan, a copy of the disclosure statement, and a ballot so that each creditor may vote to accept or reject the plan. The court may not confirm the plan unless and until the creditors have voted to accept the plan by a simple majority in number of creditors and by a two-thirds majority in overall dollar amount.

As part of a plan, a secured creditor can be "crammed down." If the value of the collateral is less than the amount of the secured claim, the debtor can prove the true value of the collateral and can pay (or propose to pay) the secured creditor that amount and have the balance of the claim treated as an unsecured claim to be paid in the same manner as other unsecured creditors. Thus, a mortgage for $100,000 on property worth $50,000 may continue as a mortgage for $50,000 with the difference of $50,000 to be paid and disposed of in the same manner as the other unsecured claims.

The plan must classify creditors and state which classes are being impaired (receiving less than owed them). Once the impaired classes vote to accept the plan, the court will hold a hearing to confirm the plan. The plan will be confirmed after the court is satisfied that the provisions of Chapter 11 have been satisfied, that the plan has been offered in good faith, that the plan is fair and equitable to creditors, and that after making plan payments the debtor has a good chance to survive and succeed in business.

After the court has confirmed the plan, the debtor is revested with its assets and continues in business without the further protection or intervention of the court. Provided the plan payments are made as proposed in the plan, the debtor is discharged from (or excused from paying) any balance of debt that existed on the date the Chapter 11 petition was filed.

B. Chapter 11 And The College

How would the basic features of Chapter 11 apply to a college bankruptcy proceeding? What actions should a college anticipate after a decision to file under Chapter 11 has been made? To answer these questions, we must recognize at the outset that not only are college bankruptcies relatively rare, but the situation of any particular institution will be sufficiently unique to make generalizations difficult. There are, however, some common themes.

Preparing a Reorganization Plan

The college must be able to convince the court that it has a reasonable chance to remedy those defects in its management or in its "market" position, *i.e.*, its ability to draw students, which were contributing causes of the college's insolvency. A reorganization plan might include some or all of the following:

1. A sale of assets:

   Bloomfield College in New Jersey successfully reorganized in a Chapter 11 proceeding partially through the sale of a golf course it owned.

2. New or expanded "markets":

   The college may through new academic programs, going coed, or opening up an evening division broaden its recruitment base.

3. Fund-raising capability:

   The college may be able to negotiate a new loan (or renegotiate an old one), provide evidence of new gifts or pledges, revitalize its alumni giving, etc.

4. Better management and fiscal control:

   Academic programs which are not self-supporting, reduction in staff or in non-personnel expenses, may strengthen the college's position.

The sections which follow describe each of these options in greater detail. But the prime consideration is that the reorganization plan must be a realistic one. The college is asking the court to give it enough time—and protection from its creditors—to effect a turn-around. Bankruptcy is a useful instrument for reorganization only if the plan is "do-able" and the institution has the vitality to follow through on what it has proposed.

Real Estate and Mortgages

An appraisal should be made of all real estate owned or leased by the college. The value of this real estate must be measured against the balance due on any outstanding mortgages or any other liens on that property. It may be prudent to consider selling any unneeded real estate in order to provide the necessary working capital or the means with which to fund a plan in Chapter 11. It may be that the investment of the college in its real estate is not producing enough of a return to justify retaining it.

If the institution is leasing property which is no longer necessary, any such lease may be rejected in Chapter 11.

Mortgages can also be restructured so that cash flow is improved. Often this can be done by consent. In a Chapter 11 context, this can also be done without the consent of the mortgage holder, under the "cram down" provisions.

Any equity in real estate might also be useful in obtaining necessary financing. The Bankruptcy Code contains certain provisions which would allow the court to restructure secured debt to facilitate such borrowing.

Federal-State Programs

Many colleges have direct loans outstanding from either federal or state agencies connected with higher education. For example, the Department of Housing & Urban Development or the Department of Education[3] may have made a loan to build a particular building and that agency may have received a mortgage on the building.

The institution should meet with relevant agencies as early as possible, either before filing or shortly thereafter. It is very likely that a federal or state agency will allow a moratorium on current payments if they can be convinced that this will lead to a long range solution. This will require the preparation of cash flow projections upon which the agency can make a concrete decision.[4]

In dealing with the representatives of federal agencies it is preferable to meet with them on campus if possible. This is especially helpful after the filing of a Chapter 11, so that they might see that all activities are continuing and that

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[3]Under the legislation creating the Department of Education, responsibility for HUD college loans was vested in the new department.

[4]In fact, many colleges have obtained moratoria on payments to HUD without bankruptcy proceedings.

operations are normal. It should be emphasized to the representatives of these agencies that the loan was given in the first place to assist the institution and at the present time a moratorium or a modification of payments would be the best assistance they can give.

Pending application for government grants or loans should be considered with attention given to whether they should be cancelled. If such applications are to be pursued, it is important to demonstrate that the Chapter 11 proceedings will not affect the institution's ability to perform under the program's specifications. It is possible to have a court hearing in order to seek the approval of the court to add a provision in the court's bankruptcy order that any unexpended funds will be returned to the government agency in the event of liquidation of the institution. Any contracts entered into based on such grants should similarly contain a provision that if the program is terminated, the contractor will have no claim for damages against the institution or against the government agency.

Public Relations

Public relations is always important to a college. It becomes doubly important when contemplating or after filing a Chapter 11 petition. The college administration should consider meeting with the officials of the municipality in which the college is located, with certain state officials, and, of course, with federal officials representing agencies with whom there are continuing relationships. Where possible, these contacts should be made before filing a petition. The college should also consider advising key creditors, such as banks and mortgage holders, before filing.

Press releases should be carefully prepared to lessen the impact of the initial announcement.

Fund Raising

The importance of fund raising cannot be overemphasized. It is difficult enough in normal times without the complications of Chapter 11. While many donors are willing to give to an ongoing institution, there will be a reluctance to give simply to pay the debts of a financially distressed college.

The institution must maintain the integrity of any restrictions placed upon gifts. For instance, the principal of an endowment fund may not be invaded to pay operating costs. Bequests from estates may be restricted for particular

purposes. There is nothing in bankruptcy law which would allow deviations from these restrictions. If the institution is to be liquidated, it may have to seek instructions from the court regarding the disposition of those funds.[3]

Of course, during Chapter 11, any doubts as to what the college can or cannot do with its contributed funds can be resolved by the court at a hearing after notice to all parties in interest.

It may be necessary that all personnel who are involved in fund raising meet with the institution's counsel to understand the workings of Chapter 11 and any disclosure requirements the college might have in the fund raising effort.

Civil Rights Suits

Businesses and colleges have been faced in recent years with many complaints filed under Title VII of the Civil Rights Act of 1964. This Act would be applicable if the defendent is an employer engaged in interstate commerce and employs at least 25 persons. Individual states have similar laws to supplement the federal statutes.

Many colleges have seen an increase in the filing of age discrimination or sex discrimination suits. This is more likely to occur in a period of retrenchment, and retrenchment is very likely to occur at a time of financial distress. The automatic stay provisions applicable to Chapter 11 are broad enough to include such civil rights actions. The Bankruptcy Court will enjoin the outside court or agency from proceeding further with the matter. Thereafter, the Bankruptcy Court can itself conduct a hearing to determine the validity of the claim and the amount of any damages.

Having the Bankruptcy Court hear these cases avoids having the college attorney appear in several courts, and brings before one judge all of the problems faced by the college in attempting to reorganize.

Continuing Operations

Unlike a business operation, it is difficult, if not impossible, to terminate a college's operation at any given point in time. Once the doors open for the start of a school year, they should not be closed until the school year is completed.

In many cases students have paid tuition for the entire year and were the

[3]See Chapter 5 of this sourcebook.

operation terminated, tuition could not be refunded because the funds are kept in trust and are simply not there to refund. Before commencing a new semester or a new school year, the institution should make certain that the funds are available to complete the entire semester or the entire school year.

If a Chapter 11 petition is filed, an early hearing should be held so that the court and any interested parties can be immediately advised of the continued operations and what is involved. This is especially important if the college is operating at a loss. It may be that the creditors will agree to allow minor losses to continue if the probability of a payment plan being offered would place them in a better position. At such a hearing, the court must also determine whether to allow the college to complete the current school year or whether to allow the college to start a new school year.

A hearing of this type must be well prepared in advance. The college should present testimony from its president, its chief financial officer and a member of its board of trustees. It should be prepared to demonstrate support from all segments of the college community, as well as from local community business and political leaders, and to demonstrate the desire and need for continuing the institution.

It is important that any testimony given and any financial projections made be accurate to insure the continued credibility of the witnesses presenting them.

Accreditation

If a Chapter 11 petition is to be filed, the college's accrediting association(s) should be notified. One or more representatives of the institution should be totally familiar with the Chapter 11 proceedings and be in a position to explain how Chapter 11 will work, the progress of the college under it, and how the college proposes to complete the process successfully.

The rehabilitative aspects of Chapter 11 proceedings can and should be emphasized. For instance, the institution has faced its problems. Similarly, after coming out of Chapter 11 the college will have a clean balance sheet and a better grasp on its financial future. It would be advisable to include in a report to the evaluating team a post-Chapter 11 financial profile and to present a pro forma balance sheet and a projected operating statement. It is also beneficial to have an informal meeting with representatives of the accrediting association and the college's Chapter 11 counsel so that all questions and concerns of the association may be fully answered.

Collective Bargaining Agreements

Collective bargaining agreements with faculty members have been the subject of the famous, or infamous, *Yeshiva* decision of the United States Supreme Court. No doubt every college has examined that decision and its applicability to its collective bargaining agreement with its faculty. In addition, as mentioned earlier, a debtor in Chapter 11 has the right to reject a collective bargaining agreement with faculty or with other employees of the institution. While such a rejection cannot void the representational election of the union as a bargaining agent, it can terminate the contract itself and afford the college the opportunity to negotiate a better contract.

Integrated Approach

It is most important to avoid *ad hoc* piecemeal solutions to problems as they arise. Financially distressed debtors have a tendency to prefer an ill-advised temporary solution to a painful long-range integrated approach.

The filing of a Chapter 11 petition can bring into one proceeding all of the problems which need attention and resolution. The protection of the court affords the institution the time and opportunity to address all of its problems and to develop a cohesive plan for resolving them. Chapter 11 is not a panacea. It is most appropriate in those cases where a college requires time to reorganize its finances and has sufficient non-liquid assets to make a successful reorganization likely. Chapter 11 proceedings are likely not to be successful in many, perhaps even most, cases. Bankruptcy is, however, an extremely effective tool and as such it should not be ignored.

Dissolution Of The College Corporation

5.

It is unarguable that boards of trustees are responsible for the operation and maintenance of the college. The board is equally responsible for its dissolution. This chapter will lay out that responsibility and will examine some of the procedures which college counsel should research before a resolution for dissolution is adopted.

A. Trustee Responsibility And Liability

> The fiduciary responsibility of the Board of Trustees required that Board to use those assets of the [Wilson] College to continue it as an institution of higher learning and as a teaching institution until its charter purposes became impossible or impractical of fulfillment . . .
>
> Neither on the facts or the law was the Board of Trustees justified in resolving on February 17, 1979 to close Wilson College as of June 30, 1979 . . .
>
> The February 17, 1979 action of the Board of Directors was indefensible procedurally and substantively. Therefore no assets of Wilson College shall be expended in payment for defense of the same.[1]

The Wilson College case was a classic example of how *not* to effect a major corporate change. The court cited procedural failures in proper notification of the State's Attorney-General's Office; the Board announced a decision to transfer the assets of the College to a foundation before obtaining court approval; and the College presented inadequate proof that it was no longer financially viable. The court held the trustees liable for the action they took.

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[1]Adjudication and Decree Nisi in the Court of Common Pleas of the 39th Judicial Branch, Pennsylvania - Franklin County Branch, May 25, 1979, pp. 83-85.

The Decree Nisi removed one trustee for gross abuse of discretion and authority and another for conflict of interest and failure to exercise recognized expertise. The entire Board was penalized financially in that the court refused to allow the assets of the College to be used in payment for defense of the action.

Even though the financial effects of the Decree Nisi were later nullified by a Consent Decree dated May 27, 1979, the Wilson College case is a graphic illustration of how, in law, trustees are the parties responsible for the well-being and operation of a college or university and of how, in the exercise of that responsibility, they can be held personally as well as corporately liable. The board of trustees of a private college hold a public responsibility in that the board derives its authority to act from state law. The articles of incorporation of the institution and the by-laws attendant to those articles define the board's authority and responsibility within the terms of the law.

In most states, postsecondary institutions are subject to the laws of nonprofit corporations or of charitable institutions. In all states general state corporate and trust law may be applicable to a college or university, as can tort (civil wrong) law. Clearly, the board's authority to act brings with it potential liability for those actions, including those delegated to the operating and executive officers of the college or university and of those delegated to subcommittees of the board itself.

Court Authority Over the Assets of Charitable Organizations

Many states[2] have enacted legislation based on the Model Non-Profit Corporation Act to govern the disposition of assets of charitable organizations. In those states which have adopted the model code in whole or in part, the trustees may be able to dispose of assets without going through the courts.

In those states, however, which have not enacted a non-profit corporate statute or where the statute does not cover a given factual situation, the common law doctrine of *cy pres* (Norman French for "as close as" *i.e.*, an approximation of the intentions of the donor) is likely to be applied by the courts to direct the disposition of the assets of a dissolved college.

There is one substantial difference between the workings of the model non-profit corporation act and *cy pres*. Under *cy pres* the determination about the disposition of assets is *always* made by the court and not by the governing

[2]See Appendix 2 "State Regulation of the Dissolution of Non-profit Colleges and Universities" for a state-by-state summary.

board of the dissolving college, although the court will take into account a proposed plan of distribution or reorganization.

This is a distinction with significant tactical implications for the parties in a dissolution situation. It means, for example, that the board of trustees of the college cannot guarantee to any other institution in advance of a judicial determination that the college will transfer the assets in question to that institution inasmuch as the court may direct the assets elsewhere.[3]

B. The Model Non-Profit Corporation Act

The Model Non-Profit Corporation Act[4] provides a logical progression for the distribution of assets. The Act requires the corporation to distribute assets in the following order: First, all debts and liabilities shall be discharged; second, any assets held conditionally shall be returned or transferred in accordance with the original requirements; third, assets held subject to use for charitable or educational purposes shall be transferred to another organization with similar purposes pursuant to a plan of distribution; and fourth, any remaining assets shall be distributed as provided by the articles of incorporation or bylaws of the institution. In some cases, when it is not clear whether a donor has specifically restricted an asset, a court of law may have to make the final determination regarding whether an asset is restricted or not.

College Charters

Charters frequently contain specific provisions regarding the distribution of assets, particularly in the case of religiously affiliated institutions. Some religious sponsors require a specific reversionary clause that governs the distribution of the assets of the institution. For example, a reversionary clause might state that the assets of the institution are held in trust for X church, and that upon dissolution the assets should be distributed to that church. The church agency designated in the charter may be in the position to release its claim to those assets so that they could be transferred to another appropriate entity.

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[3]p. Moots and E. Gafney, *Church and Campus: Legal Issues in Religiously Affiliated Higher Education,* (South Bend, Notre Dame, University Press, 1979) pp. 127 ff.

[4]*Model Non-Profit Corporation Act* (American Law Institute, 1964), Handbook "D."

Donor Gift Instruments

Various instruments written by donors govern gifts to the institution. In some cases, donors may have restricted the gift for a specified purpose or they may have provided for reversion of the asset in the event the institution is dissolved. According to the Model Non-Profit Corporation Act, such restricted assets are to be distributed to those residual holders.

Deeds

Deeds to property sometimes contain specific restrictions which govern how that property (or the proceeds from its sale) may be distributed. Some deeds to college property contain trust clauses in favor of a church or other restrictions requiring that the property be used only for the college or another college related to a particular religious sponsor.

Attorney General

The public has an interest in the distribution of the assets of a non-profit corporation such as a college. In most cases, statutes governing the dissolution of a non-profit corporation provide that the state's interests should be represented by the state's attorney general or a similar representative. Those representing the public interest will not advocate on behalf of a particular party, but an attorney general may raise legitimate questions about board decisions. In some cases, especially when restricted funds are involved, there have been disagreements about whether a particular college should be the recipient of the assets as proposed by the board of the college which is closing or whether another institution with similar characteristics, even one located in another area or state, might be the appropriate recipient of those assets.

Creditors

Various creditors may assert claims against an institution or have already placed liens against the property. Agencies of the federal government such as HUD or the Department of Education may hold mortgages to college property in return for funds which paid for the construction of that property. In most cases, these agencies have taken the mortgage on a building to secure

indebtedness. Specific conditions in these loan agreements could have an effect on the distribution of these assets. State and federal grants for equipment, library holdings, and so forth might also be subject to certain restrictions in the event of dissolution of the college.

There is a clear need for thorough assessment of all documents related to the college's assets. In the event that some assets are specifically restricted they must be distributed to the holder of the residual interest. When the matter of residual interests is ambiguous or contested, a court must determine whether those assets are restricted, whether the restrictions can be carried out, and, if not, whether the doctrine of *cy pres*, which is applied by the court in order to carry out the intent of the donor as nearly as possible, is applicable.

C. Dissolution And Corporate Change

The major forms of corporate change — merger, consolidation, and closure — require the dissolution and distribution of property of one or more collegiate corporations in order to effect the proposed change. An overriding concern in the dissolution of a college and the distribution of its property is the fact that a non-profit college corporation is legally a public charity. Furthermore, there is a public interest in how a non-profit corporation is dissolved and to whom its assets are distributed upon dissolution. In contrast to a profit-making corporation, there are no shareholders to whom the assets of a non-profit corporation can be distributed. The assets of the corporation are perpetually dedicated to a public purpose. In the event of dissolution they must be transferred to some other institution with a charitable purpose. They cannot be transferred to an individual or to a profit-making corporation. The state thus has a vital role and an interest in the dissolution of a college corporation. The state's interest is exercised through the appropriate state officer (usually the attorney general) and the courts.

The Internal Revenue Service also regulates the distribution of the assets of a tax-exempt [501 (c) (3)] institution. The IRS requires that the charter of such a non-profit corporation clearly provide that the assets of the corporation be transferred upon dissolution to an institution organized exclusively for charitable, educational, religious, or scientific purposes. Thus, IRS regulations place another limitation on a board of trustee's latitude in determining how assets will be distributed.

D. The Process Of Dissolution

State statutes govern the process of dissolution. Typically that process is similar to those recommended in the Model Non-Profit Corporation Act. First, the board must adopt, usually by a two-thirds majority vote, a resolution setting forth a statement of the *intent* to dissolve the corporation. This statement must then be filed with the appropriate state agency, in most cases the Secretary of State. Second, interested parties such as creditors and residual interest holders must be notified. Third, Articles of Dissolution must be prepared in which the college states that all debts and obligations have been paid and that the assets of the corporation will be distributed pursuant to state statute, usually in accord with the outline set forth in the Model Non-Profit Corporation Act.

A college must seek appropriate court approval of its plan of distribution and must name parties to the suit that have an interest in the institution's assets. This process provides parties with a reversionary interest in the assets the opportunity to petition the court for the return of those assets. This judicial process allows all interested parties to make claims to specific assets, thus clearing the air of unstated claims. A judicial decree, accomplished by a Plan of Dissolution, serves to notify the Secretary of State that the corporation has been dissolved. At that point a Certificate of Dissolution can be issued.

E. Specific Restrictions On Property

Once a trust is established or a gift is given with restrictions, the law serves to protect the terms of the trust. The law also tends to resolve doubts in favor of the recipient. Only those assets specifically restricted revert to the donor. In actual dissolution proceedings the disposition of assets may be straightforward or not, depending on the terms of the gift instrument or past practice regarding the use of the gift.

Gift Restrictions

If the donor, through the gift instrument or through a deed reservation, restricts the asset "to be used only by college X and in the event of dissolution the asset shall revert to Y," it is quite clear that the asset should be transferred to Y. If, on the other hand, the donor restricts the asset "to college X as long as

it continues as an educational institution" but does not designate a reversionary interest, then the question arises as to how that asset should be treated. Some courts are likely to apply the doctrine of *cy pres* in situations where it is impossible or impracticable to carry out the purpose of the charitable gift. In applying the doctrine of *cy pres* a court of equity will examine the donor's intent and all related documents prior to making a final determination of the disposition of the assets in question. In the event that there is no other institution in the same area to which assets can be distributed, the question arises as to whether assets restricted to a particular institution should remain in the geographical area and be used for similar purposes or whether the assets should be transferred to another educational institution of a similar type in some other location.[5]

Deed Restrictions

In some cases, deeds may contain specific reversionary clauses such as: "the property of this corporation is and shall be held in trust, that said premises shall be used, kept, maintained, and disposed of as a place for Christian education for the use of the ministry and membership of the X Church." In such a case, the property or the value of the property would be transferred to the church because the asset is specifically restricted.

Charter Restrictions

In some cases, charters may contain general trust provisions that the institution is operating under the auspices of a particular denomination and that its property is held in trust for that denomination. In such a case, the church may well make a claim that the assets of the institution should be transferred to the related denomination or a related educational institution. The counter-argument is that gifts and endowments that are not specifically restricted are not necessarily covered by a general trust provision.

If a general trust provision is contained in an institution's charter, the question may arise whether the donor intended the assets to be used only for the educational purposes of that particular denomination or whether the donor

[5]When Lone Mountain College was taken over by the University of San Francisco, certain furniture was ordered to the University of San Diego under *cy pres* decision. The reasoning centered around the respective religious orders with which the institutions were identified—a major condition attached to the gift of furniture by the donor.

intended the assets to be available to any educational institution regardless of its religious affiliation. In some cases, foundations may have restricted monies: "This money is given to X College as long as it continues as an educational institution." This restriction suggests that if these assets are not used by the institution for educational purposes, then the assets may revert to the foundation. Donor restrictions may establish reverter provisions such as that upon the closing of a college or its dissolution, the donated assets shall revert to the donor or his or her heirs.

Trust Principles

Church sponsors might claim that the relationship between a college and the church is such that if equitable principles were applied, the church could claim the assets even in the absence of specific restrictions. There is very little law on this issue. Under equity principles it is possible that a church sponsor might claim successfully that a trust has been created due to its relationship with the college and therefore that the assets should revert to the church sponsor. Furthermore, there may be specific agreements that identify the interest of the church and that govern assets upon dissolution. Therefore it is essential that counsel work with a church sponsor and obtain clarity on its interest and the position it would take regarding the distribution of the assets by the governing body of the college.

All of this suggests that it is essential for a college to review documents related to all of its major assets and to identify specific restrictions and possibilities of reversion. In the judicial proceedings it is imperative to identify all interested parties so that the court can review potential interests and issue a decree that covers those interests. Negotiations with donors or their heirs may enable a college to obtain releases so that the assets can be distributed by the governing board. Sometimes donors have released claims when assets are transferred to a similar educational institution but retain a restriction that if that institution is dissolved, the assets would then revert to the donor. In some cases a church body may relinquish its residual interest in order to eliminate any question as to whether the assets can be appropriately transferred by the governing board.

F. Implementation

In developing a plan of distribution, a governing board should consider a variety of options. First, the assets of the dissolving institution might be transferred to another educational institution. If the dissolving college is affiliated with a church, the assets might be transferred to another institution related to the same church. Such a transfer frequently conforms to the intent of the donors and is likely to be sustained by a court unless there are specific restrictions on the property. Second, the institution might sell (liquidate) the assets and utilize the proceeds to establish an educational foundation which would carry on some of the purposes of the dissolved institution.[6] Third, a governing board might transfer all of the assets and the liabilities of the institution to some other educational institution and then dissolve. In this case, the receiving institution could agree to continue certain programs or establish endowed chairs whose purposes reflect the essential concerns of the dissolved institution.

The general rule of thumb regarding a merger or consolidation is that assets, unless specifically restricted, can be transferred to a similar institution. If one college merges with another, assets such as endowment funds can be transferred to the merged institution unless there is a very clear restriction on such transfer. In general, courts sustain transfers when the basic purpose of the institution will be continued through the merged entity.

G. Involuntary Dissolution And Merger

Involuntary dissolution of a college is an infrequent event. The major difference between a voluntary and an involuntary dissolution is that an involuntary dissolution occurs under court supervision whereas a voluntary dissolution occurs according to the determination of the institution's governing board (although court approval for voluntary dissolution must be sought).

Typically, involuntary dissolution occurs when creditors seek to dissolve a corporation in order to protect their interests. Once creditors are paid the assets are distributed in a manner similar to that provided for under voluntary

[6]Wilson College attempted to convert its assets (when liquidated) to the principal of a scholarship fund.

dissolution. The Model Non-Profit Corporation Act contains provisions for involuntary dissolution similar to those that govern voluntary dissolution. An involuntary dissolution can also occur if the corporation has not been properly managed, *i.e.*, if there has been fraud or mismanagement by the corporation's officers, or if the corporation has failed to meet certain minimal state laws governing the operation of corporations.

H. Conclusion

When dissolving a college corporation several points must kept in mind. First, counsel must identify the legal framework in which dissolution proceedings occur. This should include an examination of state laws and an identification of the required corporate and judicial proceedings. Second, assets must be examined in order to determine whether there are residual interests that must be dealt with as part of the dissolution proceedings. Third, major college documents such as property deeds and charters must be examined to determine whether there are specific provisions in those documents that govern the distribution of assets. Fourth, parties such as religious bodies which may have an interest in the assets of the college must be identified and negotiations undertaken to determine whether appropriate releases of such interests can be obtained. Only then can the board of trustees determine how those assets will be distributed. Finally, following the appropriate court proceedings that clarify the status of all assets, the board can prepare a plan of distribution and submit it to the Secretary of State to conclude the required corporate dissolution proceedings.

When carefully planned, dissolution can be accomplished with dignity and without embarrassing squabbles over the institution's assets. A well executed disposition of the college's assets can contribute to the continuation of the original purposes of the institution.

Closing A College: Trustee Decisions And Administrative Policies

6.

"So the night passed, but then no morning broke"

John Masefield, Dauber

Closing a college is a painful, difficult, and certainly the most final of all types of corporate change. While this chapter deals largely with a planned closing, it should be noted at the outset that some colleges have been forced to close, sometimes in mid-year, without the grace of a planning period. Trustees should be aware of the damage which a precipitous, unplanned closing inflicts on the careers and personal lives of students and staff. Nor should they forget the potential liability to themselves where negligence may be involved in starting an academic year without a reasonable expectation of completing it.

A. Setting The Goals For Closing

In a review of case studies and in interviews with trustees and senior administrative staff, it is occasionally evident that trustee priorities in a closing differ considerably from those of the administration. Trustees tend to be more involved in financial and real estate decisions than in academic ones. They may have little contact with students. If a faculty union is involved, relationships with the faculty may have been more adverserial than friendly. It would not be unusual then to find a bias on the part of trustees to give greater priority to activities which maintain the value of the "estate" than to those which ease the job anxieties of faculty or the transfer problems of students.

Administrators who are in daily contact with students and faculty tend to be more sensitive to the human problems of a closing and value their solution more highly. Working with two different sets of priorities in a situation already charged with emotion is a sure source of conflict. Goals and outcomes should be clearly stated by the board of trustees and embodied in a budget especially

prepared for the closing period. The statement of goals should explicitly include the following:

1. To limit as far as possible the damage which the closing may inflict on the academic progress of students and on the careers of faculty and staff
2. To fulfill as far as possible financial obligations to students, employees, lenders, and vendors
3. To maintain as much as possible the corpus of the endowment and remaining assets and to preserve them for charitable or educational purposes.

B. Timing Of The Announcement To Close

The consensus of opinion of those interviewed in case studies was that the announcement date for the closing should be no later than midway through the first term of the college's final academic year, that is, sometime between Thanksgiving and Christmas. There were some fears that a November-December announcement could result in a high drop-out rate for the final semester. This did not prove to be the case at Annhurst College (CT) or at Immaculate Heart College (CA). In fact, in these cases, the announcement that the college was closing gave drop-outs from previous years an incentive to complete their degree requirements while there was still time and opportunity to do so.

There are four factors which support the choice of a mid-term announcement:

1. A mid-term announcement allows for a schedule of courses during the subsequent winter, spring, and summer academic terms to allow as many students who can finish their programs of study to take advantage of the opportunity.
2. Students have a greater range of possibilities for transferring to another college.
3. Faculty and staff have time to begin job searches and can be assisted in that process.
4. Arrangements can be made with federal and state officials to assure appropriate protection of all concerned. (At Immaculate

Heart College, for example, the federal regional office allowed summer school students to draw financial aid reserved for the following fall term.)

An orderly closing requires both careful planning and sufficient lead time to implement the plan for closing. If, as in the case of Ladycliff College (NY), the closing is announced in the last month of the Spring term, students may be unable to find a college nearby which offers the courses they need to graduate. Academic and financial aid transcripts may be difficult to complete. The college may find itself sued by the faculty because the announcement of closing occurred after the contract cancellation date stipulated in their employment contracts.

C. Before The Announcement

Status of the Board of Trustees

The board of trustees is charged with overseeing the affairs of the legal corporation. As the embodiment of the corporation, the board continues to have responsibilities and can incur liabilities beyond the time of its decision to close. To insure the continuity of the board's responsibility and the legality of its actions, counsel should determine:

1. Are student or faculty trustees eligible to vote after the institution closes? At Windham College the Board's by-laws did not take such circumstances into account and the legality of at least one board meeting was challenged.
2. Are trustees willing to serve during the period of closing, dissolution, and liquidation? Closing down the corporation, selling its assets, and then transferring those assets to a successor corporation may take several years to accomplish.

Avoiding Conflicts of Interest

There may be a good deal of money at stake in the sale of college property and in the disposition of equipment and assets. It is not unknown in college closings for board members or staff to attempt to turn the college's distress to their own personal financial advantage.

The board of a tax-exempt institution should be especially careful to establish *written* procedures for the sale of assets, the acceptance of bids for real estate fees and appraisals, and the disposition of equipment and the library collection.

To avoid conflicts of interest, board members who represent possible successor organizations or creditors may wish to absent themselves from committees which make recommendations about the disposition of assets.

Charter and Legal Obligations[1]

The board should retain counsel to determine:

1. Whether permission of the court and/or the state's Attorney General is required before the trustees can implement their decision; and
2. Whether the proposed disposition of assets after liquidation conforms to state law and regulation and can be permitted by law.

In addition, a determination should be made whether the department of state government responsible for higher education plays any supervisory role in the college's closing and dissolution.

Once these issues have been determined, there are at least seven other matters to address.

1. The Board of Trustees should adopt a resolution to cease operations. The resolution should contain at least three items:
   - — Reasons for closing
   - — A date for the cessation of all academic activities
   - — A statement regarding acceleration or curtailment of any academic activities which might affect contractual obligations to students.
2. If state or court authority or permission is necessary to implement the decision to close, appropriate requests and petitions should be drawn up prior to the announcement for immediate transmittal after the announcement. Competent counsel is necessary to insure that this step is executed properly.

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[1]A thorough discussion of the legal requirements for dissolution is provided in Chapter 5. State laws and regulations on dissolution are summarized in Appendix 2.

3. All public statements should be drafted and approved by the appropriate members of the board, the president, and counsel.
4. Meetings with the following constituent groups should be scheduled to explain the decision and subsequent procedures:
   - –Faculty
   - –Professional staff and administrators
   - –Union leaders
   - –Students (or student leaders)
   - –Creditors
   - –Town leaders and officials
   - –Alumni
   - –Key contributors, especially those with an interest in restricted endowments or large charitable remainder trusts
   - –State officials
   - –Regional federal financial aid officials.
5. Decisions regarding the timing of staff termination and the development of a transition team should be made prior to the announcement.
6. A timetable of decision-making and wind-down operations should be developed.
7. A budget for closing should be developed.

The budget for closing may be prepared in two stages: (a) From the announcement of the closing to the end of the academic year and (b) a Year II budget.[2] Uncertainty surrounding the final disposition of the property may prevent a Year II budget from being prepared until late in the process.

Closing costs which should be projected through the final closing of the institution are:

a. Legal fees associated with review of the charter and petition to the courts to free restricted funds or dispose of assets, and legal fees associated with ongoing counsel during the closing process

[2]This statement presumes that the college will cease operations at the end of the academic year in progress (or at the end of a special summer term) and that at least one additional year is needed to complete the disposition of assets and other details of closing.

b. Legal fees associated with the sale of real estate
c. Appraisal fees for land, buildings, library, and equipment
d. Real estate sale fees and closing costs
e. Microfilming of student records and funds for the continued maintenance of records
f. Unemployment compensation assessments (which will grow rapidly as the college winds down)
g. Severance pay, if any
h. Security and maintenance of buildings and property between the time of the college's closing and final sale
i. Health and group life insurance coverage for at least two months after final closing
j. Disposal of hazardous wastes from the chemistry and physics labs and other areas.

The Chief Executive

Has the president of the college so lost the confidence of the staff and the student body that his or her presence on the campus would hinder rather than advance the process of closing? This is a key question which the board should decide before announcing the closing of the college. The staff's personal loyalty to the chief executive is of utmost importance in a college closing. The usual incentives of salary increases and promotion have clearly evaporated. Only loyalty and professional pride are left to motivate the staff to do a difficult and unrewarding job. If it is inappropriate for the sitting chief executive to preside over the college's closing, an acting president who can command such loyalty should be appointed immediately.

Once a decision is made regarding the staff responsibilities for closing the institution, it should be communicated clearly to all college constituencies. If possible, it is well to make announcements such as these as part of the announcement of closing.

The person who presides over the closing of a college should be willing to serve at least part-time in that capacity until the entire process of dissolution is completed. Depending on the complexity of the situation, a part-time commitment may be sufficient following cessation of academic activities.

Staff Contracts

All faculty and staff members whose contracts will be terminated at the end of the academic year should be notified as soon as possible. Legal counsel should be consulted to determine whether those who will be retained beyond the closing date should be terminated and rehired under renegotiated and separate contracts.

The board should decide, aside from legal obligations, how the college can ease the transition of new employment for faculty and staff with long years of service to the college. The procedure for outplacement and severance is discussed in Chapter 7.

The Issue of Secrecy

In case studies and in personal interviews the question was raised whether the trustees' deliberations about the closing should be open to the public or be held in secret. In most college closings there was usually a general awareness that the institution was experiencing some financial difficulty; yet, when the announcement of the decision to close was made, it invariably came as a shock to all but those most directly involved in the decision. In the Newton College-Boston College merger, for example, fear of community reaction caused both parties to conduct negotiations in secret. The merger then was announced as a *fait accompli* and consummated before the community could organize against it. As James Whalen, the president of Newton College later wrote:

> The behavior of the Newton and Chestnut Hill communities had been demonstrated to us twice before, and we were not prepared to let our last chance for a creative and dignified solution to Newton's problems be engulfed by a wave of community protest. Announcing our plans to the community before they were fully agreed on seemed a certain path to failure.[3]

Not all decisions to close face opposition, however, and not all situations are the same. At Franconia College the president felt that the decision to close was one that affected the entire community and that the decision itself should be arrived at openly even if many did not agree with it. The Goddard College

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[3]Walter Borton, *The Newton College Consolidation* (unpublished manuscript), p. 136.

trustees also conducted their deliberations about keeping the college open with the college community present.

These instances point out that the issue of secrecy is one which the board must confront early in the decision-making process. Local circumstances and tradition, academic practice, administrative style, good public relations, and sheer good sense all play a part in the decision.

Reasons for Secrecy

(1) Experience shows that when the business community becomes aware that a college is debating whether or not to close, credit tends to dry up, vendors demand cash on delivery, and protective liens may be filed prematurely for unpaid bills.

(2) Premature public speculation about closing may make it more difficult to seek protection of assets under court supervised procedures.

(3) Premature public speculation about closing may dry up sources of support. Students and donors become cautious about investing time or money in an institution which publicly debates its continued existence.

(4) Faculty, students, or alumni may attempt to block the decision-making process thus effectively keeping the board of trustees from exercising their best collective judgment.

Reasons Against Secrecy

(1) Faculty, staff, and students have the most to lose in a closing. It is not trustee careers and livelihoods which are at stake. A secret decision taken without the input of those most affected is basically an unfair one.

(2) A decision openly arrived at may generate greater support and cooperation by college constituencies and reduce the human trauma associated with college closings.

(3) A decision openly arrived at may be required by the college's traditions and past practice.

(4) The decision itself is an educational experience in which members of the community have a right to participate.

(5) The process of open decision-making may produce sources of support previously unavailable to the institution.

D. Making The Announcement

The announcement and press release announcing that the college is closing should be simple, clear, and brief. They should contain:

1. The reasons for closing
2. A date for cessation of all academic activities
3. A statement of which groups or constituencies will be contacted with further information.

Notices to Accompany the Announcement

The following items should be prepared before the board's resolution is announced and released simultaneously with it.

1. A carefully written notice which will inform parents and students whether they may complete the academic year without difficulty or whether the college is contemplating an accelerated term or a premature closing, *i.e.*, before its academic obligations are completed
2. A letter to all currently enrolled students assuring them that every effort will be made to work out the best option for them in terms of degree completion or transfer
3. A letter to "stop-outs" with 15 or fewer credits left for the degree indicating that this may be their last opportunity to receive a degree from the college
4. A letter to alumni assuring them that their academic records will be available and that they will be informed when a depository institution is chosen. To forestall a large number of immediate requests for transcripts, it may be useful to remind alumni that their personal copy of a transcript cannot be used for official purposes such as government employment or graduate school. Only a certified transcript issued by the college directly to the requesting agency is acceptable
5. A letter to prospective students and their parents announcing the closing
6. A letter to faculty and staff indicating that every effort will be made to assist them in finding new employment

7. A letter to individual grantors and donors, especially those with life income trusts insuring them of the safety and integrity of their income source
8. A letter to creditors indicating whether there is any problem in making ordinary payments or that the college is seeking protection of the bankruptcy statutes.

Checklist for Notification

In addition to the persons listed above, the following persons and agencies should be sent formal notification of the college's closing:

–Office of Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202

–Regional Office, U.S. Department of Education

–State Department of Education/Higher Education

–State Guaranteed Loan and Scholarship Programs

–Foundation/corporate donors

–Accrediting agencies

–Organizations of which the college is a member

–Area colleges, especially those with whom the college has scheduled athletic or other extra-curricular activities

–Student aid organizations

–Contractors, vendors, and holders of service contracts

–Local and state law enforcement agencies

–Local and county officials—mayor, state and federal legislators

–Veteran's Administration

–Social Security Administration

–The state's Secretary of State

–Chamber of Commerce

It is of utmost importance to be responsive to the requests for information from federal and state financial aid officials. Internal federal guidelines require a "flash" audit of non-responsive institutions. Officials can be helpful if the college is open to inquiry and seems to be handling its affairs in a responsible manner.

E. After The Announcement

Even when the trustees have announced that the college will close, forces both within and outside of the college may try to overturn the decision. The president or chief executive in charge of the closing can expect to be the focus not only of anger and bitterness but also the recipient of various well-intentioned and enthusiastic schemes to keep the college open. It requires the highest degree of leadership, thoughtful planning and careful administration to minimize the interference of the college's various constituencies as the process of closure is completed.

The following comment comes from an administrator who was chosen to serve as acting president during the closing of a college.

> Preservation of the equanimity of the person presiding over a closing should be a high priority item. Clinging to any of the assumptions listed below will be counter-productive:
>
> 1. All constituents want the enterprise to die with dignity.
> 2. Students, faculty and staff will applaud a closing decision just because it was openly arrived at.
> 3. Creditors will not be hostile to any bankruptcy proposal.
> 4. Suppliers will deliver commodities during the period between announcement and closing.
> 5. Theft of school property will not be a problem.
> 6. Management of a closing is easy.
> 7. Purveyors of miracle solutions will not beat a path to your office.
> 8. Management of a closing is easy.
> 9. The number of alumni donors would increase if only they knew the "truth" about the school's needs . . .
>
> While a certain percentage of a closing school's constituency sincerely wants to be of assistance in the hour of need, there are other, less benevolent perceptions. The aggrieved faculty member who sees the closing as part of a giant conspiracy; the estranged alumnus who feels that the problem stems from inept management; the alienated student who believes that he has been misled into attending . . . all form part of the fabric of a constituency which is hostile to the

> board's decision. Vengeance may not be a viable motive for this segment of people, but their presence could be a source of anxiety for those who want nothing more than an orderly closing procedure . . .
>
> Finally, a person who presides over a closing needs to "make tracks." A careful log of decisions, activities and events will be useful in the event of court challenges or later inquiries from federal agencies or trustees.[4]

Closing clearly is a traumatic event in the lives of those it affects. It falls to the chief executive and senior staff to prepare for and deal with new patterns of behavior they will confront from students, staff, faculty, and other constituents. All must understand that the situation is *not* "business as usual" and that they must be prepared to help the college close with the minimum of personal and professional damage possible. The management of a college closing can in some instances be more akin to disaster control than to the orderly process which this sourcebook attempts to describe. A section on the "pathology" of closing is given at the end of this chapter.

The Organization of a Closing

When the decision to close has been made, contingency plans and timetables should be drawn up which reflect the realities of cash flow, debt service, employment contracts, student transfer needs, outplacement of faculty and staff, and maintenance of facilities.

There are two major administrative problems in every planned closing:

1. Senior staff members have ongoing responsibilities which, in the normal operation of the college, would occupy their working day. The extra demand of an orderly closing will add new burdens without the hope of increased compensation, promotion, or job security.
2. The most able administrators may have job offers before the college closes. Some may delay their leaving out of institutional loyalty; most cannot afford to wait.

The three senior administrators who can most likely slough off some of their normal activities are the president (who need no longer be engaged in fund-raising), the director of admissions, and the director of development. The

[4]Everett Hadley, correspondence with authors, December, 1980.

alumni director may also find that some regular responsibilities are no longer of concern.

In the organization of a closing it may be useful for the president to retain responsibility for the corporate/legal problems and delegate to these senior staff members the day-to-day coordination of the closing process, especially for "human resources" problems, *e.g.* facilitating graduation and transfer of students to other colleges, setting up outplacement procedures for faculty, assuring adequacy and availability of records, and so on.

To gain continuity as staff depart, a "Task Force" model in which several people are responsible for the completion of a job assists in cutting across the normal "vertical" administrative and organizational lines. In a Task Force structure the group as a whole is aware of individual performance and can bring pressure to bear on those who are not getting the job done. Finally, a Task Force tends to eliminate the need for one person to make decisions in isolation from the opinions of others.

An Academic Affairs Task Force can facilitate the transfer of present and prospective students to other colleges. Members of the Task Force might include members of the admissions staff, the financial aid officer, the chief academic officer, the registrar, members of the college's curriculum or academic affairs committee, student services and/or counseling staff, and students.

An Outplacement Task Force can assist faculty and staff to find new employment. Members of the Task Force might include the Academic Dean, the career counseling/placement specialist, members of the Faculty Affairs Committee, representative faculty, and the alumni officer.

The college's placement/career planning staff should take the lead in assisting faculty and staff, write resumes, fill out unemployment forms, arrange job marts, etc.

Trustees and alumni, especially those with local business contacts, can be actively involved in assisting nonprofessionals and business office staff in making contact with local employers.

A Resource Control Task Force can inventory and plan the sale or transfer of assets, records, etc. The business manager, registrar, librarian and maintenance staff are the most likely members of the Resource Control Task Force.

An External & Legal Affairs Task Force can coordinate relations with creditors, courts, press, agencies, and alumni. The college attorney, public relations/development staff and the financial aid

officer should provide support services to the president and the trustees in their dealing with the public, with government agencies, and other organizations outside the college community.

F. Academic Affairs

During a closing the academic affairs program develops a double focus:

1. Assisting students to complete programs and earn their degrees as expediently as possible
2. Assisting students in transferring to another institution once the college ceases operations.

Completing Graduation Requirements

The experience of several institutions which closed indicated that the registrar's office will be kept extremely busy by students who are currently enrolled, by drop-outs, and by stop-outs who will want to know if they will be able to graduate before the college closes and, if not, what their transfer status is.

The Immaculate Heart College case is instructive. Normally the college graduated about 120 seniors. In its final year of operation — after the announcement that it would close — Immaculate Heart College graduated 225 students. Colleges with a high percentage of commuting students are likely to face similar demands from stop-outs.

Given the experience of colleges which have closed it is likely that the registrar's office should be prepared to handle greatly increased student traffic. Chapter 8 deals with the registrar and student records in some detail.

Graduation Monitor Checklist

1. Examine the records of all students classified as juniors and seniors (sophomores in the case of two-year programs).
2. Identify all students who have completed all requirements except those of the last academic term.
3. Determine which courses should be offered during the final academic term(s) to facilitate graduation for these students.

4. If the college cannot offer all the courses which these students need in order to graduate, determine which courses can be reasonably substituted for those usually required.

Student anxiety and anger may be at higher levels than usual during the final closing term. It may be wise to establish an appeals procedure for those cases in which the student disagrees with the registrar's office about which and how many courses he or she needs in order to graduate.

Scheduling Courses in the Final Term(s)

Good judgment is essential when scheduling course offerings for the final academic term(s). The courses offered should meet the needs of as many students as possible to assist them in the process of completing degree requirements or transferring.

The registrar's office (or the Task Force chosen to fulfill this function) should be closely involved in chosing which courses are to be offered in the college's final term.

It is only prudent to avoid "innovative" or special courses whose transferability may be in doubt.

Transferring to Other Institutions

A process similar to that needed for potential graduates is needed to facilitate transfer information — information which will concern the majority of students.

In the case of prospective graduates the objective is to assist as many to get their degree as possible. Similarly, in the case of prospective transfer students the object is to help as many transfer with as many credits as they can:

1. The records of sophomores and freshmen should be examined to determine which general education (core) requirements can be met by the greatest number of students.
2. The records of students who have declared majors should be examined to determine which courses they should be counseled into taking during their last term at the institution to make transferring easier for them.
3. Recommendations should be developed regarding substitution of courses to assist students in meeting requirements.

The administrative strategy for assisting students to transfer to other institutions differs depending on whether the college is heavily residential or heavily commuter. In the case of a commuter college, a transfer task force may be able to visit most of the area colleges for face-to-face visits with their admissions staff without undue expense. If this is possible they will be able to assess, in a way not possible by reading catalogs, how flexible each of the colleges is about residency requirements, transfer of credit, financial aid packages, and general institutional willingness to help. Information from such visits will be helpful in counseling students and in matching them with colleges which would best serve their needs.

The staff at a residential college which draws students from a wide geographical area may wish to draw up a list of colleges with characteristics similar to their own, *e.g.*, similar religious affiliation, single sex, academic program or atmosphere, etc. Some of these colleges should be visited for the kind of assessment mentioned above.

Foreign Student Transfer Problems

For legal reasons foreign students are often fearful about losing their status as full-time students when a college closes.

It would be useful to prepare a "coping sheet" for foreign students covering such questions as:

- How many credits or units they must be enrolled for to maintain their legal status with immigration officials?
- How many credits they need in order to transfer to another institution? Some basic skills or English as a second language courses may not be transferrable. Some colleges may only accept transfers with 30 credits — or as with California's public universities, no student may transfer with fewer than 56 credits.
- Is there a need for a TOEFL score?

Degree Completion at Other Institutions

Students who are within striking distance of completing the requirements for a degree may suffer a significant loss in both time and money when a college closes. With their investment of at least three years of work at the college, they are likely to have accumulated a number of non-transferable credits. For

example, religious studies credit may not be transferable to a state institution; grades below C are not transferable even though applicable to a local degree; credits in a major for which another college does not award a degree may not be transferrable; credit by examination or life experience may not be accepted; and so on.

In the desire to minimize the damage to such students when a closing occurs, several colleges have in the past petitioned the authorities in their respective states for permission to grant degrees for a specific period of time after the college ceases to offer instruction. The idea is that if a student can earn the necessary credits at another college within a year's time, then the closed college will award the degree. In Connecticut, for example, the State Board of Higher Education allowed the Board of Trustees of Annhurst College to award degrees until June, 1981, but on two conditions:

a. The Board of Trustees was required to appoint an academic officer to verify to the Board of Higher Education that degree requirements were fulfilled.

b. The Board of Trustees was required to remain in existence until the final degrees were awarded. In effect, the college, although no longer offering instruction, continued to exist as a corporate entity.

Annhurst's effort to deal fairly with students was to a large extent thwarted by federal regulations on student financial aid. Under federal regulations CFR 174.9; 174.2(b) students are eligible for federal student financial aid only if they are enrolled in an eligible program. Once the college ceases its instructional activity it loses its eligibility as a conduit for federal student financial aid, *i.e.*, a closed college no longer has eligible programs. Thus, once the college closed, a student who was matriculated for an Annhurst degree was ineligible for federal student aid *even if the student was earning the required credit at another eligible institution.*

The following is a response[5] from the U.S. Department of Education to the question of continued financial aid eligiblity of students matriculated in a college which closed:

> Over the years, a consistent administrative pattern has been adopted in dealing with these statutory requirements, namely that an institution

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[5]Letter from Leslie W. Ross, Chief, Institutional Eligibility Branch, Division of Eligibility and Agency Evaluation, Department of Education, dated July 11, 1980.

It should be noted that federal officials do not oppose some accomodation for students of closed colleges. But present legislation allows them no leeway in determining eligibility requirements.

must be open, actually conducting classes, and offering instruction, if it is to remain an eligible institution. These practices have been implemented as well in the so-called "Standards Regulations" (45 CFR 168.20 attached) relating to audits, records, fiscal responsibility administrative capability and refunds. Note also that 168.20 describes procedures to be followed by institutions which close or cease providing instruction.

Consequently, it follows from this consistent past practice and regulatory posture that we are unable to administratively waive these requirements.

One other reminder that seems indicated here, namely that the basic rule in student aid is that an eligible student must be enrolled in an eligible program at an eligible institution. Further, under the program guidelines (e.g., 45 CFR 190.2(a) of the BEOG Regulations), students who transfer from a closed institution must be enrolled at the latter for purposes of obtaining a degree or certificate from the school where they are actually attending classes — otherwise they are not defined as "eligible students" under the current regulations.

Despite the loss of eligibility for federal financial aid, there may be some students who would suffer great financial loss if they had to complete their degree requirement at another institution. The college may wish to seek the extension of degree-granting authority even though it has lost its financial aid eligibility.

G. Protection Of Assets In The Process Of Closing

Chapter 4 of this sourcebook deals with bankruptcy as a tool for reorganization. Many financially distressed colleges do not have enough assets to use Chapter 11 of the bankruptcy act as a way to financial health. Chapter 11 may, however, be useful in preventing real estate, library, and equipment from being sold by creditors at bargain basement prices.

As bankruptcy laws now stand, involuntary bankruptcy proceedings cannot be initiated against an eleemosynary institution. While it may be preferable to close and liquidate the institution outside a bankruptcy court setting, individual creditors may begin to disrupt the college's plans. In that

case the protection of the bankruptcy court may be required to allow the college to "teach out" the academic year and protect assets from premature seizure.[6]

H. The Library

The library presents a special problem in a planned closing. The collection cannot be properly inventoried until the academic year is ended because students and faculty are still using it. The inventory and the subsequent sale of the library should be considered as a major item in the college's post-closing budget. The board may wish to consider whether an employment contract should be extended to the librarian or a competent assistant for three or four months beyond the closing date to insure proper disposal of the library.

The closing and sale of the library focuses on three salient questions:

1. What is in the collection?
2. How much is it worth?
3. How best may it be sold?

Appraisal of Library Holdings[7]

The library collection should not be sold hurriedly. Word of its availability may spread slowly and selling opportunities may increase with time. Before advertising the collection an appraisal of its value should be secured. Appraisers often tend to be more interested in first editions or rare books than in a general collection. Before hiring an appraiser, make sure that he or she has experience in judging the value of a liberal arts library and has some knowledge how it may be sold. *The American Book Trade Directory* published by Bowker (NY) gives a state-by-state list of appraisers of library collections. Although some dealers do not mind giving an off-the-cuff opinion of the value of one single book, dealers everywhere expect to be paid a fee for the appraisal of a collection of any size or value. An appraisal may be done on a

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[6]Drawn from correspondence with Frank J. Vecchione, December 1980.

[7]Much of the material in this section is drawn from Leab and Leab, "Appraisal," *Book Collecting*, ed. Jean Peters, (New York, Bowker, 1977), pp. 183-195.

per diem of between $150-$400 or on a percentage of the sale value of the collection.

If the college has a fairly general collection, as most small liberal arts colleges do, an auction house appraisal is probably best. Most of the major auction houses charge between 1 percent and 1½ percent of the value of the collection to produce a written appraisal; this fee is usually refundable if the collection is sold through that house within a year. In the case of a very large or a very small collection a flat fee may be set.

> At the conclusion of the job the appraiser should produce a written and signed statement of appraisal. The format of this statement is of some importance. A signed document reading "2,000 art books with an average value of $200" is worse than useless. A good model for format is that required by the IRS for appraisal reports on items deducted as charitable contributions.
>
> In general, an appraisal report should contain at least the following:
>
> 1. A summary of the appraiser's qualifications to appraise this particular property;
> 2. A statement of the value and the appraiser's definition of how that value was obtained;
> 3. A full and complete description of the article to be valued;
> 4. The bases upon which the appraisal was made, including any restrictions, understandings, or convenants limiting the use or disposition of the property;
> 5. The date the property was valued;
> 6. The signature of the appraiser and the date the appraisal was made.[8]

If the college has any doubt about the procedure which the appraiser has followed, a code of ethics has been established by the American Society of Appraisers. A copy of the code can be had by writing to the association's headquarters at 1101 17th St. N.W., Washington, D.C. 20006.

Disposing of the Collection

To receive proper market coverage for the collection, it would be wise to advertise both in trade journals such as the *American Bookseller* and the *A.B.*

[8] *Ibid.* pp. 185-188.

Bookman's Weekly as well as in more widely read higher education publications such as *Change* and *The Chronicle of Higher Education.*

Rare books or pieces of art, if they are *not* to be sold as part of the collection, should be removed before advertising or showing the collection to potential buyers to avoid misunderstanding about what is included in the collection.

Several alternatives are available for disposing of the library's holdings:

1. Advertising and securing bids for the library in its entirety
2. Dividing the holdings into subject matter areas and marketing these to interested parties
3. Selling the collection at a public auction.

The first alternative is usually the most efficient approach in that it takes the least effort. To sell the collection to several buyers or to auction the library holdings requires greater precision in the inventory and may not produce as much revenue.

In the process of securing bids, the institution's right to reject all bids should be made clear in order to protect the institution against any obligation to accept a bid which is too low.

The Inventory

A college in financial trouble has probably already cut the library staff and budget to a maintenance level. In such circumstances a complete inventory may not be feasible.

One reasonable alternative is to conduct a shelf inventory by subject area. An inventory of books on the shelf can then be compared with the shelf list cards. This will quickly identify missing titles.

As a further indication of the quality as well as the quantity of the collection, certain series or reference works that are difficult to obtain could be separately listed.

Assessment of the Value of the Collection

The value of the full collection may depend how it is sold. Three or four sections of the library may make up the bulk of its monetary value. But if these are sold separately, the balance of the collection may have little sale value.

Selling the collection in sections also involves the very labor-intensive

task of pulling the cards. This is a cost that has to be balanced against the sale price of any particular section.

Winding Down the Library Operation

Winding down involves both closing accounts and providing service. The following suggestions may be of assistance in this process:

- Continue to buy periodicals so that the collection is complete for that calendar year. Complete sets are easier to sell.
- Cancel standing orders for yearbooks and reference works with the current volume.
- Set a date to stop ordering new books based on whether the purchase will be received in time to be used in the college's final semester.
- An "amnesty" for book fines should be announced for the final two weeks of the college's last regular session so as to maximize the number of returns to the collection.
- Gift books, unless they are on the purchase list, should be left unprocessed. A sale of these and other remainders might coincide with an Alumni Day or a special day for Friends of the Library.

Security of the Collection

The college library, even in normal times, is a natural target for theft. This is even more the case when the college is closing. Real or imagined grievances on the part of the faculty, staff, and students may erode the usual moral restraints against outright theft. To insure the security of the collection it may be necessary to change locks and put rare and valuable items in locked cabinets or closets.

Colleges buying a collection often make it a practice to retain the librarian at the closing college as a consultant to insure the integrity of the collection. It is also wise to move the books as quickly as possible.

Unique Items in the Library

Most college libraries maintain at least one copy of every thesis written by one of their students. These are listed in published indexes and some 15 to 20

inter-library loan requests are made for them each year. These unique items should not be sold unless as a set to another college or university.

I. Alumni Association

If the alumni association is not separately incorporated, it may wish to take this step before the college closes. Unless the association is incorporated as a tax-exempt organization, gifts and donations are not tax deductible.

The closing of the college raises the larger question of what role the alumni association might play in continuing the college's traditions, holding reunions, and in some cases, serving as a survivor corporation to receive the college's assets after liquidation.

It may be to the development and fund raising interests of another college of the same denomination to receive the alumni records and play host to annual reunions.

Alumni may continue to honor their pledges even after the closing is announced. It would be appropriate to stop sending reminders.

Mailings

The letter to the alumni announcing the closing should include a reference to the continued availability of transcripts and the fact that they will be informed where the college's records will be kept.

To prevent an undue number of requests for transcripts, it may be useful to add that for official purposes — graduate school, government employment, etc. — only a transcript issued by the school itself is acceptable.

Alumni and the Closing

Alumni, especially those living near the college, may be of assistance in helping faculty and staff find employment in industry and government.

J: The Pathology Of Closing'

Closing a college is not a routine management exercise. The incentives which a good manager uses to motivate his or her staff are no longer available in the college's final days. A president is unlikely to have the funds to reward good performance and the hard-working employee has no hope of promotion. Nor does the threat of dismissal carry much weight. In the closing days of a college's life even a poor performance may be better than none at all. The key element in an orderly closing is loyalty and trust. At some institutions, the bonds of loyalty are tighter than at others. The atmosphere which surrounded the closings of Mount Saint Mary's and Immaculate Heart was calm, orderly, even loving. None of those adjectives could be used to describe the Windham College closing. As a rule of thumb a college will die as it has lived. Whatever weaknesses in administration or morale were present in the college's final years will only be magnified in its closing. What follows is a "cautionary tale" rather than a set of events to be found at every college closing.

1. The timing and manner of closing can trigger anger and resentment, often expressed in damage to physical plant and theft of property. If payrolls have been missed, employees may reimburse themselves "in kind." Deliberate malice may express itself in destruction of records and spreading of rumors and lies.

2. Staff turnover will be high. As key people are lost in the business office or financial aid office, recordkeeping may become haphazard. Bills and financial aid awards may be contested with no record to determine who is in the right.

   As of this writing, the bankruptcy trustee at one college has refused to issue academic transcripts to about 200 students who have unpaid bills. The tragedy here is that many of those "unpaid bills" are disputed because of sloppy record-keeping during the college's last year of operation. At another institution, creditors attempted to seize students' personal property to satisfy the college's obligations.

3. Closings have more than their fair share of staff fatigue and burnout. People are asked to perform tasks which are outside both job title and ordinary experience. Staff may make up data rather than do the necessary research. Jobs reported done are left undone.

'This section draws heavily on the experience and comments of Dr. Larrimore Crockett of the Vermont Higher Education Council.

4. Uncertainty about new employment, bitterness toward inept management, and generalized anxiety may cause health problems among faculty and staff. Use of alcohol, long lunches, and early leaving times may cut into staff performance.

Some of these problems are amenable to administrative solution. Ladycliff College, for example, produced a daily bulletin which laid rumors to rest and gave accurate information about meetings with admissions personnel from other colleges, placement sessions, and so on. Other problems can only be endured. The one key element in keeping a college together in its closing days is to have a chief executive who commands the loyalty of at least the administrative staff. No other trustee decision is as important in a closing as the choice of the person who will preside over it.

Faculty and Staff

7.

When a college undergoes major corporate change, when it merges or closes, one of the most time-consuming and difficult areas is invariably dealing with faculty and staff. Legal, moral, and psychological issues are all closely entwined in virtually every decision which affects staff.

Site visits and case studies of closed and merged colleges brought to light two basic attitudes about the rights of faculty and staff and the obligations of trustees toward them. On the one hand, a college is a non-profit, tax-exempt organization. As such its assets may not inure to any individual. Faculty and staff thus have a legal claim to collegiate assets only to the extent that they are able to establish a property right to those assets. In the absence of establishing a property right, either through contracts or other means, staff may have no claim to collegiate assets, including funds which could be used to support severance payments. Trustees are, above all else, the holders in trust of an "estate" provided by others for the benefit of society. Consequently, their first obligation in law is to that "estate" and to the successful completion of the institution's mission. All other interests can be measured against this goal. Thus severance is a "right" only when the use of collegiate assets to provide severance is not in conflict with the meaning of the college's trust.

On the other hand, faculty and staff at a small, tuition-dependent private college are major contributors to the college's "living endowment." By accepting salaries which often are below the going rate at better-endowed or publicly supported institutions, they make a very real if hidden donation to the college's continued operation. In this sense, faculty and staff are more than just employees; they can also be considered creditors of the college. Thus faculty and staff seem entitled to severance pay as a recognition of the college's moral obligation for their service and other foregone income.

These two attitudes, and their inevitable mixture, make the trustees' deliberations regarding treatment of staff one of the more vexing problems in closing.

A. Administrative And Policy Decisions

On the administrative and policy levels closure or merger raises four questions with regard to faculty and staff:

1. What should be done regarding severance pay?
2. What are the college's legal and financial obligations in providing unemployment insurance?
3. What should be done regarding out-placement of staff?
4. What is the status of pension funds for those who go into retirement?

Severance Pay

The first and most obvious issue is whether or not there are sufficient funds to provide severance pay at all. Assuming that funds are available and that it is appropriate to use them for severance, the task for trustees becomes to develop an equitable formula for distribution of the college's assets as severance pay.

Equity in a strictly legal sense would define severance pay in terms of the employee's property right to his job. The dollar value of his claim would be largely determined by (a) the time period of the contract; (b) the salary stipulated for that period; and (c) whether a notification date or due process for non-renewal of a contract has been agreed upon. If in the timing or in the process of closing the college violates the terms of the contract, faculty and staff may sue to recover what is due them. The faculty at Ladycliff College (NY), for example, brought suit against the trustees when the college closed because notification of non-renewal came after the date stipulated in the contract.

Equity based on a moral rather than a legal claim may best be reached by stipulating a maximum benefit and then establishing a sliding scale in which the employee's age and length of service are taken into account. Severance pay was calculated in the Newton College-Boston College merger as follows:

> . . . severance payments to long-term Newton employees [were provided] at a rate of five percent of their salary at the time of termination for every year of Newton service. This applied to employees who had been with Newton for more than five years.[1]

[1]Walter Borton, *The Newton College Consolidation,* (unpublished manuscript), p. 127.

Unfortunately, no one formula will apply to every case. Some settlements have been generous because assets were available for the board to be generous. At Edgecliff College (OH), for example, a proposal which would provide each faculty member with at least one year's salary was circulated prior to its takeover by Xavier University. In other closings, such as Annhurst College (CT) and Ladycliff College (NY), the faculty received no severance because of a lack of funds to pay them.

Most professional staff have no experience with unemployment insurance, its procedures, or its benefits. The better part of wisdom would be to anticipate questions and to take steps to help staff understand the process of claiming unemployment insurance, to determine the benefits to which they are entitled, and even to arrange a workshop for faculty and staff with appropriate state officials.

Insurance and Pension Plans

Health, disability, and life insurance coverage should, if possible, be extended to cover faculty and staff during the period of their transition to new employment. Employees should be informed of the steps they must take to provide their own coverage when the transition period expires.

If the college participates in a standard pension fund such as TIAA-CREF, it would be helpful to have a representative of the fund explain what options are open to staff members to continue in the plan or to withdraw their contributions from it. If the college has its own pension plan, advice of counsel should be sought to insure that ERISA requirements are met. In the event of a merger or takeover of a private college by a state college or system, faculty pension funds should be protected. Many states require staff participation in the state pension system; the status of private pension funds should be made clear so that the benefits accrued to staff members who participated in the private pension fund are protected.

Outplacement

Whenever a college closes, and often when a college merges with another institution, faculty are left without jobs. There is a growing belief that, especially in a tight employment market, it is a corporate responsibility to assist staff in finding other places. Efforts at placement have run the gamut from simply providing letters of reference to providing positive job-search support including assistance in preparing resumes and in searching for other

employment (including providing stationery, secretarial services, and postage), to holding workshops on job-search and interview techniques, to complete career counseling and placement services.

When considering outplacement it is important to remember that many, if not most, faculty members have no real work experience outside of academe. They may need help — not only help in finding a new position but also help with deciding what it is that they want to do and what they can do. This can be especially true for faculty in their forties and early fifties. Faculty members in their late fifties might be able to take early retirement; this option probably is not open to faculty members in their forties — the most difficult age to find new employment outside of education.

Regardless of the level or extent of outplacement services offered (if any), it is imperative that faculty and staff know what services to expect. Clear, accurate, and definitive information from the beginning can help avoid rumor and its nearest relative, discontent. The Miami College-Western College merger was made much more difficult because faculty did not understand from the start that not all of them would be continued.[2]

B. The Psychological Dimension

While outplacement, pension funds, and so forth must of necessity occupy an administrator's time, it is important not to forget that a closing or a merger is a time of stress for all staff and that stressful situations affect behavior. Administrators and trustees must understand that faculty and staff may avoid facing the reality that their jobs are gone. Proffered help may be met with passivity or even bitterness. Rumors and worries will dampen morale unless promptly refuted. Decisions, once reached, must be firm; otherwise there will be constant pressure by more vocal staff members to change policies and procedures on the basis of expedience or special pleading.

The closing or merging of a college has been compared to the death of a relative. People associated with an institution which is going out of business often react as do those who are losing a loved one. O'Connor and Willmer argue that trustees can learn from the Kubler-Ross framework describing human reactions to death or dying.[3] The sequence of denial, anger, bargaining,

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[2]Millet, *Mergers in Higher Education* (Washington: American Council on Education, 1976).

[3]O'Connor and Willmer, "On Humanely Closing an Institution of Higher Learning," *AGB Reports*, 1980.

depression, and acceptance is visible in many college closings and mergers.

Ira Goldenberg, who was president of Franconia College (NH) when it closed, remarked that closing the college was more like divorce than death, that after a while people learned to cope with the new environment. But Goldenberg also reported changes in behavior including anger and hostility on the part of staff in spite of the fact that they participated in the decision to close the college.

Closing or merging a college is at best a stressful situation. The board of trustees and senior administrators must be prepared to understand the effects of this stress on staff, on students, and even on alumni and their families, and they must be prepared to deal with them sympathetically and effectively.

C. Newton College And Staff Outplacement: A Case Study

The case study which follows describes the activities undertaken by Newton College of the Sacred Heart (MA) to assist faculty and staff in finding new employment. While not a model which all colleges can follow — Newton College had more assets available to it when ceasing operations than many colleges can expect to have — the case study is a graphic description of the complexity of dealing with the human factor in closing a college.

Legally, Newton College merged with Boston College. In substance, however, it more closely resembled a closing. Because it exhibits features of both merger and closure, it is especially instructive.

Background

Newton College of the Sacred Heart merged with Boston College in the summer of 1975. The 1974-75 academic year was a transitional year and the last year in which Newton College offered instruction as an independent institution. The decision to merge Newton College with Boston College was announced in the spring of 1974. The account which follows, adapted from an unpublished manuscript by Walter Borton, begins with the announcement of the merger.

The Outplacement Effort

The most persuasive argument for the decision to precede the merger with Boston College with a year of joint operations during 1974-75 had been to provide an employment bridge for faculty and staff. Without the transitional year, Newton employees would have had only four months to seek new positions. Both administrations agreed that joint operations for one year were worthwhile in order to guarantee sixteen months notice to Newton employees.

In the spring of 1974, in addition to meeting regularly with the faculty as a group, President Whalen met personally with almost every Newton faculty member. During these meetings, they discussed the future and what it would mean in terms of employment. Whalen stressed the need for concise, up-to-date resumes for each faculty member. He explained what severance pay would involve. But above all, Whalen repeatedly emphasized that each faculty member should take personal, aggressive action to seek a new post rather than wait for Newton to "find" jobs or for Boston College to offer jobs. Despite his urgings, Whalen sensed that the faculty would be slow to begin their search for employment. He says:

> From early March, I was certain that our most difficult problem would be employment for our people. There were a number of reasons for this and each was bound to be tough to contend with.
>
> The job market in higher education was extremely tight and destined to become tighter. For our younger faculty who recently had completed doctorates and had not let connections in their disciplines lapse, the market was not quite so formidable. At lower ranks and salaries they were somewhat more attractive to department chairpeople faced with shrinking budgets and the necessity to hire as inexpensively as possible. Our senior faculty, most of whom had been at Newton a number of years were, of course, older, tenured, and relatively well paid. They were predominantly white and male, and, as was the case at many institutions similar to Newton, the College's emphasis had been on classroom instruction. As a result, very few of the senior faculty had committed much of their time to publication or to acquiring positions of prominence in their disciplines.
>
> My talks with senior faculty members in the weeks after the March announcement revealed another problem area. The senior faculty had, for the most part, felt very secure at Newton. Their relationships with the Society of the Sacred Heart had been pleasant and supportive, and it was my perception that most had planned to

conclude their academic careers at the College. I knew consolidation would be difficult for them to accept, and I was right. The announcement elicited responses far less realistic than I would have hoped for — I knew I had a problem.

Some were so devastated that they were almost unable to discuss the possibilities of seeking employment elsewhere. Others began to search frantically for ways in which to entice Boston College to guarantee them employment. A surprising number simply avoided the entire prospect of seeking employment after the initial shock of the announcement wore off. I had hoped that we could provide support for a group of people actively and aggressively seeking employment. I became concerned instead that we would have to lead many of them by the hand and worried that they would develop the attitude that we would find jobs for them.

Of course, some of our outstanding faculty continued to show the spirit that made them good teachers and advisers and began searching for alternatives on their own. But the passivity of many of the faculty disappointed me. I thought we were doing a good job — we were spending money to create extra services to help faculty find employment. Initially, I thought this would bring a wave of support and positive feelings from faculty, but it quickly became clear that our work would be perceived as helpful only if we could guarantee success.

. . . By late summer, 1974, I perceived that we were going to have to be actively involved in a full time way in getting jobs for faculty. Consequently, I began searching for funds that would allow us to set up a placement service operating out of the President's office. I obtained permission from several donors to divert contributions originally intended for an unfunded Women's Institute to placement activities and asked my assistant to take on a major portion of the responsibilities. In retrospect, I think that overseeing the placement activities was one of my most important roles during the transitional year, since this was an area where we were dealing directly with peoples' lives and futures.

At the first faculty meeting of 1974-75 the President urged the faculty to begin searching for jobs and reminded them of his willingness to help. He made himself available for personal interviews with all faculty and each faculty member who wished could meet with his assistant to review vitae and discuss the condition of their placement folders at their alma maters.

In preparation for these visits, the President's assistant reviewed a number of techniques for the presentation of academic credentials. He talked with professional resume writers, researched the recommendations of both academicians and business people, he sought advice from placement directors at other colleges, and he examined formats used to transmit vitae and recommendations for recent graduates as well as active faculty members. With this background he advised faculty regarding the formats of their vitae and showed those interested in applying for positions outside the academic sphere how to prepare more business oriented resumes. He also emphasized that each faculty member should have updated recommendations in his or her placement file.

As meetings with the faculty progressed, it became clear that many had not prepared a formal curriculum vitae in years and that several had not maintained placement files. What had initially been intended as a counseling role for the President's office expanded quickly, and the Assistant to the President began writing vitae and resumes himself. The newly-formed faculty placement service also assumed responsibility for typing and reproducing the vitae and resumes as well as maintaining placement files for faculty who did not have them elsewhere. These files included letters of recommendation, publications, and verification of academic credentials. They were sent to search committees and department chairmen regularly during the year in folders specially designed and printed for that purpose. By year's end, the President's office was serving as the formal placement office for all faculty who wanted to participate.

During the fall of 1974, Whalen wrote a personal letter to 219 college and university presidents in the New England-New York area, describing the consolidation with Boston College and the desire of Newton College to aid its faculty and staff in finding positions. He asked his fellow presidents to share this information with their staffs and to advise him personally of any openings which occurred at their institutions. A similar letter went to the headmasters and headmistresses of 91 private secondary schools in the New England area. The responses to these letters identified over 100 planned openings for which members of the Newton faculty might be eligible.

As responses from the mailing identified openings, individual instructors were advised by phone and postings of the positions went up at several locations frequented by faculty. Listings of available Newton faculty members, including brief statements of their credentials, were sent to institutions who responded to Whalen's letter and a forty page booklet of condensed vitae of Newton College faculty was printed.

As a result of Whalen's letter and the booklet, a number of faculty

eventually were offered positions. Some took the jobs, but others refused to leave the Boston area. Had they been more flexible as to geographic location, several more faculty could have been placed as a result of the President's contacting other colleges.

The resume booklet also was used to respond to general inquiries from other institutions, and when Newton administrators or faculty attended professional conferences copies were distributed. At the ACE conference in the winter Whalen gave the booklet to interested presidential colleagues and their deans and arranged to have it available in professional offices at other institutions. In this way, Newton's faculty received attention across the country.

Since a tight job market indicated that at least some faculty would have to pursue alternative careers, the Massachusetts Department of Education was contacted to see if Newton faculty could be certified to teach on a secondary level. The Department indicated that arrangements for certification would be fairly simple, and eventually 10 faculty members were certified.

For faculty considering redirecting their careers into the public sector, a consultant in local, state, and federal relations was retained. He talked with more than 40 faculty members who were willing to look into other areas if they could not continue teaching. The consultant assisted faculty in identifying branches of government for which their backgrounds might be suited and helped identify the correct contact points for pre-application and application discussions. He made personal contacts on behalf of Newton faculty and staff and he designed vitae which would emphasize more strongly skills and training of interest to governmental agencies. He was available for counseling as individuals made their first forays into the employment market and he provided follow-up for a number of individuals in agencies where he had acquaintances.

An important element in placing faculty was their ability to attend professional conferences and travel interviews. Funds for this purpose were drawn from monies diverted from projects abandoned because of the merger. Funds were used also for long distance phone calls made for placement purposes from the President's office, as well as the typing and reproduction of vitae and resumes.

The President wrote numerous personal letters to acquaintances and friends on behalf of specific faculty members and he wrote nearly 200 individual letters in support of active candidacies. Some faculty required several of these special letters.

At the January meeting of the Newton Board of Trustees, President Whalen reviewed the extent and progress of placement activities. Among staff and administrative personnel, the picture was a positive one. The Director of

Non-Academic Personnel at Boston College had interviewed all Newton staff members interested in employment at Boston College. He had stated that Newton staff would be given first consideration for positions as they opened on the Boston College campus. In the event of openings occurring before the end of the academic year, he agreed to try to hold the jobs open until qualified Newton staff could be released from their duties. A visit to the Newton campus was arranged to observe the working situations of staff members to gain a better understanding of what sorts of positions they would be qualified for. Several offers were made.

Four members of the Newton administrative staff accepted offers for the coming year and one of them left the College prior to the end of 1974-75. The remainder of the administrative staff was pursuing a variety of active candidacies for posts at other institutions. The residence life staff was certain to be offered similar posts at Boston College but, in the event that they preferred to work at other institutions, the Director of Residence Life had been in contact with her counterparts at 30 institutions and had identified a number of openings for which her staff would be considered.

The faculty situation could not be reported on as enthusiastically. Of the 40 full-time and 29 part-time faculty, only one had obtained a definite position and had left the College. Two faculty members had taken part-time positions at other institutions in hopes that the posts might grow to full-time appointments and they had been relieved of a portion of their teaching loads to accommodate them. Many more faculty were in a state of hopeful limbo. They had resumes out and had been through interviews. Waiting for the verdicts which might not come until late in the winter was a difficult but not highly unusual exercise.

President Whalen reported on the difficulty Boston College was experiencing in determining its openings for the coming year, but added that it appeared that Boston College would have openings in only about ten areas for which Newton faculty would be appropriate. Newton faculty would then have to compete with all other applicants for those positions. He estimated that at that point it seemed three, or perhaps four, Newton faculty would receive Boston College appointments, but that the number could be eight or nine if Boston College decided to retain a number of the studio art faculty. There was also the possibility that positions in the administration of Boston College might be offered to one or two Newton faculty members. Whalen recalls how depressing the figures seemed to be:

> In January it seemed that our worst fears would come to pass and that only a handful of our faculty would be employed at the end of the year. Most schools were in budget trouble, enrollment trouble, and tenure trouble. Few institutions were able to replace faculty or create new

positions and those that were needed were junior faculty or highly specialized instructors. It was obvious that there were hundreds of applications for every available position. Administrative paring, which is always first in the retrenchment process, was also underway and the likelihood of faculty moving into that area seemed limited.

The attitudes and behavior of many of our faculty had not helped matters greatly, either. We had offered to help and ended up doing much more of the actual work than we had anticipated. The number who required leading by the hand was frustrating and time consuming. Early in the semester, a number of tenured professors sent a rather unpleasant letter to Father Monan of Boston College suggesting that their tenured status implied some legal obligation on the part of Boston College to retain them, and they did this the day after I had discussed that question at length at a faculty meeting. That behavior was not only disturbing to me, but I was certain that it would not be helpful in my efforts to encourage the academic leadership of Boston College to hire our people. In spite of specific instructions to the contrary, several faculty members had avoided the channels we established to insure their consideration at Boston College and engaged in discussions with department chairpeople independently, which, I do not doubt, created more problems for them than it solved.

I was amazed at how few of our faculty appeared serious in their job searches. Some of our more senior members had not talked with my assistant or me and a number of them had given us no indications of their plans. I think the assurance of severance pay may have contributed to the lackadaisical attitude displayed by some senior faculty toward their job searches. I heard reports that senior, tenured professors were telling their colleagues at other institutions that they were certain to be hired by Boston College, and others were telling potential employers that because of consolidation they never would be able to get a job anywhere. Unreasonable behavior and irrational statements could do nothing but harm everyone's chances of finding positions. Still, there were many others who were carefully and professionally pursuing every possible avenue in the search for a new post and, because of their credentials and their attitudes, I trusted that they would be successful.

In late January Whalen proposed a plan that provided two year fellowships to those members of the Newton faculty who had been with the College for ten or more years and who held a terminal degree in their field.

They would teach two-thirds of a full load at Boston College with one-third released time to concentrate on publications and other activities which would enhance their employability at the conclusion of the two year period. The cost of the plan was estimated to be roughly $300,000. The price tag seemed within the realm of possibility to the group (especially since Newton's anticipated operating deficit now appeared to be considerably less than anticipated), and the employment situation was sufficiently grim to warrant its proposal.

On March 5 the Newton Fellows program was announced. It was an important turning point for morale on the campus and signaled the beginning of a series of successes in the placement effort.

Midwinter had indeed been depressing on the job front and it was difficult to wait it through. But when the offers began to come in, morale revived and consolidation again took on a brighter hue.

Placement activities continued through the later winter and early spring and included the offering of a seminar on Career Life Planning by two consultants from the Boston College Management Institute.

The seminar was a tailored application of a program used with a number of business and industrial organizations in the New England area. The program had never been presented to faculty members before and the consultants were interested in how they would respond.

Three major purposes were outlined for this workshop. First, it would help persons facing a career decision examine their personal and career goals to aid them in putting future plans into sharper focus. Many people's career plans and aspirations represent something of a projective "random walk," and the program does help clarify where they are now and what they really like doing best. Second, the workshop helped people assess what resources they currently had available and those which they needed to develop in order to make the transition to a similar, if a different, career. Finally, the workshop would end with an inventory of those things in a person's life situation which restrain change and those which promote change.

Eight Newton faculty members took advantage of the workshop. Although this was fewer than the sponsors had hoped, it was generally considered to be helpful to those who attended. Evaluations suggested that such a program might have been better received earlier in the academic year. The consultants noted a strong interest on the part of participants in the pragmatics of job finding and a somewhat less interest in the exploration of the personal attitudinal factors which directed career development.

As the second semester continued, placement service activities were directed toward support of specific faculty members in their candidacies for identified positions. Additional letters of recommendation were prepared, credentials transmitted, and arrangements made for the establishment of

permanent files at Boston College at the year's end.

By early April, ten Fellowships were arranged. Over two-thirds of the faculty were assured employment for the next academic year.

As Newton's last year progressed, attention of both the business and finance officers turned to assuring that all matters pertaining to faculty and staff members' fringe benefits, records, and personal situations were successfully resolved prior to their departure.

President Whalen suggested and received agreement from Boston College that an attempt should be made to extend insurance coverage for the faculty and staff beyond June 30, 1975. He felt that many employees might not begin a contract year until early September and was concerned that they might not be covered by medical and life insurance for a two or three month period. Of the three carriers, two agreed that special arrangements for complete coverage during July and August could be arranged, if premium payments were completed by the end of June. One carrier, from whom long-term disability insurance for professional staff had been purchased, could not make interim arrangements. However, agreements on the method of payment and price of coverage were negotiated with the other two carriers. These agreements were completed in late winter, 1975. Under the arrangements, medical and life insurance for all Newton employees would be extended through September 8, 1975, at no added cost. The full price of the premium was paid by the College since it was impossible to deduct it from employees' pay.

This benefit proved extremely important: A faculty member became gravely ill during the period of extended coverage and a member of the physical plant staff died in late August. For the families involved to have been without insurance would have been tragic.

Special retirement arrangements were made so that all Newton employees eligible for retirement benefits had pensions guaranteed under the consolidation agreement or a cash settlement in lieu of retirement.

Newton's Business Office computed the specific details of these benefits for eligible employees on a case by case basis. Each employee's package was reviewed before it was handed over to Boston College for final review and agreement. As a safeguard, Newton's staff put every aspect of each retirement case in writing, including the levels of compensation and a review of years of service at Newton. Several special arrangements were made for Newton employees nearing retirement age who wanted to continue working and for those wishing to retire prior to age 65 who had been employed by the College for many years. Each special arrangement also was approved in writing by Boston College.

The original agreement included a general statement that Newton

employees subsequently employed by Boston College would not suffer a loss in computation of their years of service pertaining to retirement or fringe benefits. As the individuals were identified who would become Boston College employees, their cases were reviewed with Boston College's director of personnel to determine exactly what their new benefits would consist of and the employees were briefed at both Newton and Boston College. All Newton College personnel records were reviewed to insure that they were in order, and each employee was interviewed and briefed on his or her available benefits, severance eligibility, and status in regard to unemployment claims.

Accrued vacation for support and administrative staff was reviewed and employees were encouraged to use their earned vacation prior to the end of June. Approval was given for a few employees to take pay in lieu of vacation, based on the legitimate need of the institution rather than a preference for a cash settlement by the staff member.

By the conclusion of the school year, each faculty member and employee had been advised of his or her benefits, the actions required to continue insurance coverage, and any agreements with Boston College which would affect his or her employment situation.

This process — organizing retirement benefits and pensions, reviewing and updating personnel records, making sure vacation time was taken, following through on people hired by Boston College — was a lengthy undertaking, but at its conclusion everyone knew what to expect in terms of retirement and severance payments. Each individual knew how their benefits would change if they were to be hired by Boston College. Each individual knew how long his or her insurance would last and how to get more if they needed it. Each employee had his or her own personal written guidelines. As Newton merged, its staff attended not only to paperwork details as well. As President Whalen remarked:

> I think it is fair to say that we tried hard, Boston College tried hard, and a number of our faculty tried hard as well. The results were not perfect, but they were very good. I am convinced that we were correct in putting much time into the placement effort and that it stands out both as one of the major responsibilities and one of the major successes of the entire consolidation program.

Student Records And Student Financial Aid

8.

A. The Office Of The Registrar

The registrar's function in the event of closing, merger, or takeover, is one of the most crucial.[1] In an institution with possibly a century or so of history behind it, the records manager is faced with a staggering responsibility. The first question to be decided is how to prepare this great bulk of records of human achievement for transfer to the proper authorities so that former students, historians, and in some cases, government agencies will be able to obtain quick access to accurate information about students' performances and programs of study.[2]

Another important question to be answered is *where* the records should be stored and under whose supervision. Some states now have legislation governing the disposition of records from defunct colleges; others are in the process of formulating such legislation.[3] One of the registrar's first acts in preparation for closing the college should be to contact the state board for higher education or other state agency overseeing postsecondary education to determine whether or not state regulations exist and, if so, what they require. Only after these guidelines have been studied should the college decide where the records are to be kept and who will be responsible for their security, access, and release.

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[1]This chapter will focus on closing inasmuch as it raises virtually all of the issues involved in the disposition of student records.

[2]To assist in the process of transferring records the Board should consider two policy decisions: (1) The Board may wish to adopt a policy in which students with recorded grades of "Incomplete" or its equivalent have until the final day of instruction to complete the work for a grade. After that date all grades of "Incomplete" can be listed as "Withdrawal" on the student's transcripts. (2) If the college has followed a policy of placing a hold on the records of students who have not paid all fees the Board should consider an "amnesty" and declare that all students, regardless of the status of their debts to the college, may have access to their records. An amnesty gets around the problem of asking the depository institution to check the financial status of student finances prior to releasing a transcript.

[3]See Appendix 1.

But while these steps must have priority in the plans of the administrative officer in charge of records, another, equally important obligation is to assist currently enrolled students.

The first concern is for the rising seniors. Since many institutions have a two-year residence requirement, rising seniors are the students most seriously affected by a closing. Some transfer institutions are willing to waive the residence requirement for such students. Another solution to the problem of the rising senior, if the student prefers it this way, is to permit the student to pursue an approved program as a guest at another college for the senior year and then, with permission from the state, to award the degree from the defunct institution at a kind of posthumous commencement a year following its closing. This can be done if the college corporation is still in existence.[4]

For rising sophomores and juniors the problem is one of facilitating smooth transfer to other institutions. As soon as practicable following the decision to close, the college should initiate a series of "Transfer Days" when representatives of appropriate colleges are invited to visit the institution to talk with students interested in transferring. It is helpful at this point for the registrar to provide students with up-to-date unofficial copies of their college records. By presenting these to visiting admissions counselors, students can obtain quick and realistic appraisals of their chances for admission to other colleges and gain accurate information on the possibilities for articulation between their former programs and those offered at other institutions. Certainly these transcripts should be provided to students free of charge. The need for such copies arises through no fault of the students.

This is a time when additional counseling offices should be set up so that all students have easy access to advice from faculty and administrators whom they know and respect. Most colleges maintain reference shelves of catalogs from other colleges. This reference library should be located within reach of students and counselors, and administrative aid should be available to the student in need of a hard-to-come-by catalog.

This phase of the closing will be especially busy for the transcript clerk; practically every underclassman will require one or more transcripts, to say nothing of the alumni who decide that they should have personal copies of their records. The transcript clerk may need additional help and priority access to a copy machine.

After assisting students with transferring, it is useful to monitor their matriculation at another institution. A questionnaire can serve this purpose. The registrar can minimize students' future problems by sending to the transfer

[4]Cf pp. 70-72.

colleges packets containing original documents such as letters of recommendation, descriptions of independent projects, practice teaching records, and information regarding scholarships and financial assistance. The student's permission should be secured prior to sending these documents.

The registrar must decide which records are to be preserved and in what form, and must make provision for instructing the staff at the chosen depository who will be responsible for maintaining the records and issuing transcripts in the years to come.

The American Association of Collegiate Registrars and Admissions Officers' (AACRAO) Task Force on the Retention of Records and its *Guide for the Retention and Disposal Student Records* (1979) recommends that the following records be permanently retained:

- Academic records (including narrative evaluations, competency assessments, etc.)
- Catalogs
- Change of grade forms (update documents)
- Class Lists (original grade sheets)
- Commencement programs/graduation lists
- Records of disclosures and requests for disclosures of information other than that defined as "Director Information" by the Family Educational Rights of Privacy Act of 1974
- Schedules of Classes (institutional)

The *Guide* also states that "any record which has been recommended for permanent retention should also be microfilmed for security."

Academic Records.

According to the AACRAO *Guide* (p. 22), the academic record is "a chronological history of a student's entire quantitative and qualitative learning achievement and reflects the basis under which the individual entered and left the institution."

Record styles, accepted practice, and federal guidelines have changed what is considered appropriate information to include in an academic record. The records of students alive and well and looking for mid-life or post-retirement careers are likely to include such extraneous information as religious affiliation, race, or social dismissal for misdemeanors now considered too trivial for reprimand. The "purist" registrar will argue that the record is an

historical document and no alteration to the original is acceptable; but some records managers routinely cover these outdated bits of information before reproducing a record for release as a transcript. If this has been the practice in the past, instructions to the depository staff should include this direction.

If previous registrars of the college have done their jobs well, the current registrar can assume that it is not necessary to examine thousands of records for possible errors. Unfortunately, this is not always the case. Regardless of the condition of the student records, it is more than likely that over the years a college will have made changes in credits, grading systems, graduation requirements, and/or academic calendars. An all-purpose transmittal notice must be designed, if it is not already in use, to explain fully every existing type of record in the files. In addition to the transmittal form, it is well to direct that information regarding the present location of the college's records be applied to each copy of record issued in the future. A stamp used by Garland Junior College reads, "On July 30, 1976, Garland Junior College closed. Academic records of Garland are now maintained by Simmons College, 300 The Fenway, Boston MA 02115."

Most colleges which have closed during the past ten years have simply turned over their original hard copy records to the selected depository. Even if the records consist of only one or two sheets of paper each, the sheer bulk of material may cause a serious storage problem for the agency accepting the charge. It is unlikely that the college will have fully computerized records going back to its founding, and if it does it is also unlikely that the depository will have a comparable computer system of accessing and producing records to fill requests and transcripts. A better plan, if funds are available, would be to have the entire file of permanent records reproduced onto microfiche jackets. For a file of approximately 25,000 records, the conversion could probably be accomplished in one week and the resulting microfiche file could be housed in a single fireproof cabinet less than three by four feet and about forty inches deep. Microfiche jackets make access and retrieval comparatively simple. Of course a microfilm reader printer (approximately $1,000 in 1980) would be required to produce transcripts.

An alternative system is to transfer the permanent records to microfilm reels. The initial transfer is a trifle less expensive than converting to microfiche jackets, but the retrieval and reproduction of records is slightly more expensive and not quite as easy. Whatever system is used—hard copy, computer, microfilm, or microfiche—it is absolutely essential for security that a duplicate copy of the file be prepared on microfilm and stored in a safe, fireproof container located in a different building or area from the original.

Retrieval of Academic Records

Every school should have an efficient and easily updated retrieval system for locating records of former students. If records have routinely been stored by year of entrance or graduation, the depository staff will be in for a merry chase trying to locate certain records. One of the best systems, but one unfortunately not widely used, is to assign each record a unique number. A simple computer program can quickly arrange the names, to which the numbers are assigned, in alphabetical order and provide the registrar with a complete alphabetical list of every student who ever attended the college. This list will serve as the key to retrieval of any record and no change whatever will have to be made in the storage order of the actual records or their microfilmed copies.

Catalogs and Directories

Essential to the proper maintenance of student records is a complete file of all catalogs published by the closing college. These should be bound in chronological order and clearly labeled as to school and academic year. Ideally, there should be two sets of bound catalogs: One reserved for archival use and one available to the depository staff for reference. Former students often require descriptions of courses completed and it is a simple matter to photocopy a page from a bound catalog to supply this need.

It goes without saying, or perhaps at this point it is too late to say it, that bound catalogs should have been corrected and updated as changes in curriculum occurred each year after the final copy went to the printer. Courses added just as a semester begins are difficult to document in the future unless they have been properly added to the catalog for that year.

College directories listing names and addresses of students and faculty for each year are another valuable source of information and well worth preserving. Often directories are bound with catalogs and other publications. If not, it would be well to assemble a directory file. Some state legislation governing the disposition of records requires that an accurate list of faculty, with their addresses and degrees, be turned over to the department designated for custodianship of records from defunct colleges.

Class and Grade Rosters

The AACRAO *Guide* insists on permanent retention of such supporting documents as grade rosters, and legislation formulated or under

consideration by several states requires that grade rosters be turned over to the agency designated for maintaining the records. Any registrar who has had to justify a recorded grade on a transcript by producing for a skeptical student the original roster signed by the instructor will see the wisdom of providing the depository staff with the same capability. A single copy of the grade rosters produced on microfilm and stored near the permanent record file may be insurance against future disagreements. Students seldom challenge good grades, but there seems to be a built-in mechanism which blocks the D's and F's from memory.

Commencement/Graduation Programs

A complete and accurate file of graduation lists will be an invaluable reference source to the new records keepers and to historians in the future. The graduation list is often the quickest way to identify a former student, especially if some part of the student's name has been changed.

Records of Disclosures and Requests for Disclosures

Regulations regarding disclosure of information regarding a student these days often relate to FERPA, the Family Educational Rights and Privacy Act of 1974. Since the closing college is not likely to be receiving additional federal aid and would, therefore, not be subject to penalty by having aid cut off for disclosing student information, a custodial agency may not be as sensitive to students' right to privacy as the college registrar would be. It is imperative, then, that instructions to the depository staff spell out clearly what the conditions are under which information about a student's record may be released and to what agencies. It may come as a surprise to the nonprofessional that the Federal Bureau of Investigation may not be granted automatic access to a student record but should be required to produce a release from the student for doing so.

Procedures Manual

Before turning over any records to an outside agency, the registrar of the closing college should prepare a clearly written and all-inclusive procedures

manual for use by the depository staff in maintaining, explaining, and granting access to student records under its supervision.

Registrars and their staffs are usually well-informed about federal and state laws and generally accepted good practice in regard to protecting and releasing student records. But when the records are turned over to an outside agency, or even a neighboring institution, it cannot be assumed that the new staff will have the same information or even the interest in preserving the old ways of doing things. The departing records manager should try to anticipate any conceivable circumstance that would require explanation and provide and answer in a procedures manual.

Did the institution conduct a special program one summer which is not described in the regular catalog? Was there an interinstitutional arrangement with neighboring colleges in which students could take courses at other schools, but only the *home* institution, and not the *host* institutions, kept permanent records on the students? These and any other anomalies of record keeping need to be explained in the manual.

As for procedures to be followed in release of transcripts, well-managed records offices provide their staff with concise but inclusive how-to-do-it manuals which describe every step in preparing and issuing student transcripts. If the registrar already has such a manual it requires only to be revised to accommodate the needs and skills of the new custodians of the records.

Doubtless there are other records which the registrar will consider worthy of permanent retention. The deciding factor on what to keep and what to destroy will ultimately be the amount of space allotted for storage. In any case the records manager will be faced with some agonizing decisions. Statistics laboriously compiled over the years, enrollment figures, grade distributions, teaching load reports, and endless other precious files will have to be destroyed unless a college archives has been established.

One important note of caution about destroying records. The registrar would be wise first to compile at least a rough inventory of existing records and circulate this inventory among other administrative officers at the college as well as the state agency overseeing postsecondary institutions. In at least one state this is mandatory and in others the directors of state archives are available to work with discontinued institutions in effecting the disposition of records.

If a group of faithful alumni or local historians are interested in working on writing the history of the defunct college, or the history of a particular movement such as the women's movement, documents of value to that effort can be turned over to such individuals or a designated committee. Otherwise decades of correspondence, reports, and carefully preserved memorabilia

must go to the incinerator and important segments of the nation's heritage are irrevocably lost.

Academic records and the supporting documents which verify and corroborate them are not the only student records to be maintained. Other offices of the college will have decisions to make and regulations to follow. To mention a few:

Career Development Office – letters of recommendation

Comptroller and Financial Aid – records of payments and loans

Personnel Office – records of employment and performance of faculty and staff

Medical or Nurse's Office – student health records.

Career and vocational offices are increasingly reluctant to retain or release personal vitae or letters of recommendation for former students. Letters written before the Privacy Act of 1974 were assumed to be confidential and so are not available to students. Letters written in recent years may or may not be confidential depending on whether or not the student waived the right to access. The complexity of sorting out which may be released and which may not could exceed the capabilities of the depository staff. It is the general consensus that legal counsel should be sought before any action is taken, but that probably the wise course would be to destroy all health and career records.

Many of the colleges which have closed during recent years have been church related. In states where it is possible, these colleges transferred their records to the motherhouse of the order or to some other central office in charge of overseeing the education arm of the denomination. In some cases the former registrars were transferred along with the records to preside over their maintenance and release.

Colleges which were in any way affiliated with large universities have turned over their records to the parent institution. Transfers like these are probably the least traumatic for all concerned. Other transfers of custodianship are too bizarre to be worthy of mention and must have cost the alumni dearly in terms of access to records. Happily, the current efforts of state governments to regulate the disposition of records for disbanding institutions promises to regularize future transfers.

Whatever depository is chosen or assigned, it is of vital importance that the president or registrar of the closing college make every effort to inform all former students of the institution of the impending closing and to let them know exactly how and where they will be able to obtain transcripts and information regarding their records. The search for former students will consume time and

effort and may require several mailings. The success of this endeavor will be measured by how effectively the alumni office has done its job in the past.

One of the *last* acts of the departing registrar should be to notify the postal authorities to what address mail intended for the defunct college should be forwarded. The reason for saving this step for the very last is that there is a limit to the time when mail sent to an old address can be forwarded to another one. The Domestic Mail Manual of the United States Post Office Department states that, under the heading time limit for change of address order, "A time limit specified by addressee may not exceed one year."

B. The Financial Aid Office

The purpose of this section is to describe the steps that must be taken (a) to provide students with the financial aid documentation necessary for transfer to another institution, (b) for closing out federal financial aid accounts in an orderly fashion.[3]

1. Documents for Students

There are three documents which each student should have when transferring to another institution.

1. A financial aid transcript
2. A copy of the "Student Eligibility Report" (SER), if the student is the recipient of a Pell Grant
3. A copy of the student's Financial Aid Form (FAF).

The Financial Aid Transcript

The financial aid transcript is an absolutely essential document for a student's transfer to another institution and the college is required by the Department of Education to issue it. If a student does not have a certified financial aid transcript (*i.e.*, signed by a school official authorized to issue such transcripts), he or she will be denied access to any Title IV funds, including GSL loans at the institution to which the student has transferred.

[3]For complete instructions see Part 668 of Title 34 of the Code of Federal Regulations.

An institution does not have to provide the requested financial aid transcript if:

a. the student is in default of any Title IV loan made or received for attendance at that institution, or

b. the student owes a refund on any Title IV grant received for attendance at that institution, or

c. the institution participates *only* in the Pell Grant program (*i.e.* not in NDSL and SEOG as well) under the Alternate Disbursement System.

The following is the minimum information which the financial aid transcript should contain:

a. The student's name and social security number

b. Supplemental (SEOG) and Pell Grants awarded to the student
   1. name and source of grant(s)
   2. amount disbursed for each award period under each grant program
   3. the scheduled Pell Grant

c. Loans to the student
   1. name and source of loan(s)
   2. the amount advanced for each payment period under each loan program
   3. the name and address of the lender if the school was not the lender

d. An indication whether the student is in default or not
   1. on an NDSL loan made by the institution
   2. on a GSL or PLUS loan made for attendance at that institution

e. Whether the student owes a refund on Pell, SEOG, or SSIG grants received for attendance at the institution.

A college may provide more information on the financial aid transcript, *e.g.*, non-federal institutional grants, but this is not required by the regulations.

The Student Eligibility Report (SER)

Pell Grant recipients who transfer to another institution in the same award period – as might be the case in a mid-term closing – must

submit an SER to the institution to which they are transferring to make use of the balance of the Pell funds available to them.

An SER states the amount of the applicant's expected family contribution and information used in that computation. It is ordinarily filed in the student's financial aid folder.

If the unavailability of the SER is widespread, as may happen in a mid-term closing, it would be prudent for the college to provide students with a standard form to request an SER.

Similar letters for Social Security, Veteran's benefits, GSL, and FISL might also be considered.

2. College Closings and NDSL Loans

From all accounts, the transfer of National Defense/Direct Student Loans (NDSL) to another college or back to the Department of Education is a major paperwork problem.

Colleges in financial trouble often do not have the energy or staff to keep NDSL records up-to-date.

At one college it took more than two years to transfer NDSL notes back to the federal government. If the records are not in good order it may take almost as much time to transfer the notes to another college.

Federal officials seem to most concerned that the legal instruments of debt., *i.e.*, the loan notes, are secure and in good order.

Transfer of the NDSL Account

If a college responsible for an NDSL Fund closes, the account may be transferred (a) to another institution in the same state; or (b) to the Department of Education if no institution in that state wishes to receive it. In either case, the college which is closing does not recover its 1/9 capital share. The Department of Education considers that the cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

3. Distribution Formula for the Refund of Unearned Tuition and Fees

The distribution formula for institutional refunds is, on the face of it, fairly simple. If a student receives 60% of his aid from a Pell Grant and 20% from

NDSL, then 60% of the refund should be credited to the Pell Grant account and 20% to the NDSL account.

The problem with proper distribution lies not in the formula but in the institution's statement of its refund policy. An institution's normal refund policy may very well be inapplicable in the case of a closing in the middle of a term. The question of the refund to which a student is entitled is a matter of contract or quasi-contract, and may be a potentially very litigious issue. Students may well argue, and courts may well agree, that they are entitled to a full refund of tuition and fees for any uncompleted term, since, by virtue of the institution's action, they are not getting what they paid for. A school may have a very hard time arguing that a student should be responsible for 50%, or 25%, or whatever, of a semester's tuition, if a student has not been able to complete any transferable credits during the semester in question.

The State of California has instituted an insurance program called *The Student Tuition Recovery Fund* which covers student tuition losses when a proprietary school closes. The regulations do not apply to non-profit colleges and universities accredited by a regional (as opposed to a national) accrediting agency. No such program has been instituted at the federal level.

Once the question is settled of how much refund is due a student, the Title IV distribution formula can be applied without any problems. 34 CFR 668.21 mandates that a college which closes must make refunds of unearned tuition and fees. This reference speaks only to the point that the same distribution formula required in the normal course of events is required in the case of a college closing. It is not intended to restrict the use of the formula to instances where the institution's normal, published, refund policy is applied. The distribution formula would be in effect regardless of what refunds are determined to be due the students. (This latter question would be governed not by the Title IV regulations, but by other applicable law.)

34 CFR 668.20 lists the following additional steps which institutions must take in the event they cease operations:

1) notify the Secretary of that fact;

2) refund to the Federal government, or otherwise dispose of by instructions from the Secretary, any unobligated or uncommmitted Title IV funds it has received (the institution may retain any administrative allowance to which it is entitled);

3) submit to the Secretary within 45 days of the effective date of closing
   i) all reports required by each Title IV program regulation; this would include, *inter alia*, a Fiscal Operations Report for the

campus-based programs and a Pell Grant Progress Report

ii) an audit of all Title IV funds received.This audit would cover the period since the filing of the last prior audit;

4) inform the Secretary of the arrangements for proper retention and storage of all records concerning the administration of Title IV programs. These records must be maintained for a minimum of five years;

5) inform the Secretary of how it will provide for the collection of any outstanding Title IV loans.

The Title IV regulations are silent as to whether a school that is closing need conduct exit interviews with its NDSL and FISL borrowers. At a minimum, the school should confirm with its borrowers the amounts of their indebtedness, so that any questions or disagreements may be cleared up while records are still readily accessible and staff who may be able to clear up such problems are still available. The borrowers will probably have to enter repayment status, since they will no longer be enrolled at the institution from which they received their loans, and will have file deferment forms annually until they complete their education. Exit interviews would provide a means to explain deferment procedures and other repayment terms to the borrowers. Repayment schedules will have to be prepared, either by the school or the transferee of the loan accounts. The borrowers should also be told at this time who has acquired the loan accounts, if such a decision has been made. If exit interviews are not feasible, information should be mailed to borrowers.

If the school uses a billing service, steps must be taken to terminate the contract and insure the delivery of records to the transferee. A determination will have to be made of the status of any accounts in the hands of collection agencies.

If an institution has any loan accounts funded from its own monies, it will have to make a decision as to how to dispose of them. If it assigns them to some other entity, it must expect to do so at a substantial discount.

Treatment of Guaranteed Student Loan applications may present some problems, particularly in the cases of a mid-year or mid-term closing. Many, if not most, state guarantee agencies require that GSL checks be disbursed no later than the last day of the term for which they are approved. If this type of restriction is applied to closing schools, or if for any other reason difficulties arise regarding disbursements to students subsequent to the point at which the school ceases to function as an educational institution, provision should be made for students whose pending loans were intended to cover expenses (either institutional charges or education-related living costs) incurred prior to

the school's effective closing date. Some institutions may advance short-term loans, to be payable from GSL proceeds. The institution should determine how it will treat these loans if the students are unable to obtain the funds with which they intended to make repayment.

Institutions should review carefully the regulations of any state guarantee program under which their students are borrowing, and if any disbursement problems are anticipated, try to negotiate acceptable arrangements with the states involved. It is possible that any pending applications will have to be amended, to reflect the change in costs.

Along the same lines, students who submit Pell Grant SER's after the effective closing date may be eligible for the Pell Grant to be applied toward expenses already incurred. Should it be impossible or unfeasible to disburse such Pell Grants through the institution, arrangements should be pursued to have these students paid through the Alternate Disbursement System.

Just as the institution must refund uncommitted federal aid funds and submit necessary reports to the Department of Education, so it will have to deal with state grant and other outside programs. Refunds would have to be made, where appropriate, to specific scholarship sponsors; this would include any advance receipts.

The institution must terminate its College Work-Study (CWS) Program as of the effective date of closing. Many college departments that employ CWS students may continue to operate after closing; they will not be able to continue business as usual as far as their student employees are concerned. All CWS employers, both on- and off-campus, and all CWS students, should be given timely notice that CWS funds will not be available to pay for hours worked after the closing date. Efforts should be made to retrieve time cards, covering periods after the closing date, that may already be in employers' hands.

APPENDIX 1:
STATE REGULATIONS REGARDING THE DISPOSITION OF STUDENT RECORDS OF PRIVATE COLLEGES AND UNIVERSITIES

APPENDIX 1: STATE REGULATIONS REGARDING THE DISPOSITION OF STUDENT RECORDS OF PRIVATE COLLEGES AND UNIVERSITIES[1]

ALABAMA

Alabama has neither legislation nor regulations governing the disposition of records of private non-profit institutions.

ALASKA

Alaska Statutes, Sec. 14.48.150:

(a) If a postsecondary educational institution proposes to discontinue its operation, the chief administrative officer of the institution shall file with the commission the original or legible true copies of academic records of the institution as specified by the commission. The records shall include that academic information customarily required by colleges when considering students for transfer or advanced study and the academic record of each former student.

(b) If it appears to the commission that records of an institution discontinuing its operations are in danger of being destroyed or otherwise made unavailable to the commission, the commission may seize the records, under an order of the superior court. The commission shall maintain a permanent file of records coming into its possession under this section.

ARIZONA

Arizona has not reported either legislation or regulations governing the disposition of records of private institutions.

ARKANSAS

Arkansas has neither legislation nor regulations governing the disposition of student records of private institutions.

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[1]During 1980, Dr. Warren Evans of the Pennsylvania Department of Education and Evelyn Schroedl of Goucher College conducted independent surveys of state higher education coordinating bodies. This appendix presents a compilation of the results of those surveys.

CALIFORNIA

Superintendent's Regulations to Implement the Private Postsecondary Education Act of 1977 state:

(b) Any institution shall, in the event of complete cessation of all operations, immediately retain a custodian of records and advise the superintendent of the custodian's name, address and telephone number. The institution shall arrange for the custodian to retain, for the balance remaining of five years, all those records described in Education Code Section 94312(k) along with each former student's record of attendance and academic progress.

COLORADO

Colorado reports state legislation governing the disposition of academic records and grade rosters.

CONNECTICUT

Under the authority of Section 10-323e(a)(13) of the General Statutes of Connecticut (revised), the Connecticut State Board of Higher Education maintains student academic records and catalogs of colleges dissolved after September 1, 1969.

DELAWARE

Delaware has not reported either legislation or regulations governing the disposition of student records of private institutions.

DISTRICT OF COLUMBIA

The Commission on Postsecondary Education retains student records. When an institution discontinues operations, the chief administrative officer of that institution must file the academic records of the institution with the Educational Licensure Commission.

FLORIDA

Florida Statutes, 246.091(3) state:

A licensed college, prior to the discontinuance of operation, shall have the duty to convey all student records to the board or to another location designated by the board.

Regulation 6R-2.09 implementing the statute states:

Institutions which discontinue operation shall take the following action:

(1) Prior to discontinuing its operation, an institution licensed under the provisions of Sections 246.011 through 246.151, Florida Statutes, shall perform the following duties:

(a) Notify formally all currently enrolled students of the decision to cease operation;

(b) Notify students in writing that information concerning student records which may be obtained from the board;

(c) Convey all student records to the board, or to another location designated by the board; and

(d) Satisfy and complete all contractual obligations between institution and all currently enrolled students.

(2) The records of students received as set forth immediately above all be stored in a safe place for reproduction as requested by students.

GEORGIA

Georgia has neither legislation nor regulations governing the disposition of records of private institutions.

HAWAII

Hawaii has neither legislation nor regulations governing the disposition of records of private institutions.

IDAHO

Idaho has neither legislation nor regulations governing the disposition of recrds of private institutions. Presently, records of defunct colleges are maintained by state-supported senior institutions.

ILLINOIS

Section 8.4027 of the regulations of the Board of Higher Education states: "A closed institution shall arrange for its student records to be maintained in a suitable place." (Prior to January 1, 1979 the State Board of Education attempted to have records maintained by existing institutions and to keep hard copies of records at the Board.) The

Board of Higher Education is addressing the specifics of its regulations during 1981.

INDIANA

Indiana has neither legislation nor regulations governing the disposition of records of private institutions, although the Indiana Commission for Postsecondary Proprietary Education does have such regulations.

IOWA

Iowa statutes state:

Chapter 264.1 *Mandatory transfer of record of credits.* The trustees or officers of any institution of higher learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution must transfer to the office of the registrar of the State University of Iowa complete records of all grades attained by its students.

Chapter 265.7 *Records of prior defunct institutions.* The office of the registrar of the state university is hereby designated the central depository for the records of any institution of higher learning which prior to the passage of this chapter may have ceased to exist, provided the custodian of the said records or former officials of the institution may wish to take advantage of the provisions of this chapter.

KANSAS

House Bill No. 2801, passed in 1980, requires that the State Board of Regents assume custody and control of such student records at the written request of the defunct school, at the written request of a successor institution, at the written request of a student of such an institution, insofar as that student's records are concerned.

A procedure is set forth to be followed by the State Board of Regents for obtaining the records of a student of a defunct school which are in the possession of a successor institution.

KENTUCKY

H.B. 48 of the 1980 Kentucky General Assembly amending KRS164.020 passed on July 15, 1980 requires that the Council on

Higher Education shall:

Develop procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945 and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate after the effective date of the Act. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee.

Regulations are being drafted to implement this legislation.

LOUISIANA

Louisiana has neither regulations nor guidelines governing the disposition of records of private institutions.

MAINE

Maine legislation (Chapter 301 § 2203.1) states:

The trustees or officers of any college or other post-secondary institution of learning, whether incorporated or not, upon going out of existence or ceasing to function as an educational institution shall turn over its records of attendance and academic achievements by its students to the department to be preserved as important material of historical and record value. It shall be the duty of the commissioner to collect all attendance and academic records of post-secondary educational institutions within the State which are now extinct and to deposit such records in a place of safety and accessibility for preservation and future use.

The Department of Education and Cultural Services oversees the implementation of these regulations.

MARYLAND

§ 12-207 of the Annotated Code of Maryland states:

(a) Records to be furnished. — Before any institution of postsecondary education operating in this state discontinues operation, its chief administrative officer shall file with the State Board for Higher

Education the original or legible copies of all essential records of the academic achievements of all former students of the institution.

(b) Form of records. — The records shall present, as separate documents: (1) The academic record of each student; and (2) Any other academic information usually required by institutions of postsecondary education when considering students for transfer or advanced study.

(c) Board to maintain records. — The Board shall maintain a permanent file of all records filed with it under this section. (An. Code 1957, art. 77A, § 32A; 1978; ch. 22, § 2.)

MASSACHUSETTS

State laws specify that the Board of Higher Education is responsible for all student records of institutions that have ceased to operate. Nothing is said about institutional records. In practice, the Board of Higher Education has arranged in every case to transfer the student records of a closing institution to another college or university, with the understanding that the receiving college will assume responsibility for those records.

MICHIGAN

Records of private schools and colleges which cease operations come under the jurisdiction of the Superintendent of Public Instruction. As a matter of policy, such records are assigned to the custody of another college which agrees to provide transcripts and other services to former students.

MINNESOTA

The Minnesota Higher Education Coordinating Board registers private institutions and non-Minnesota public institutions offering programs in Minnesota. Each institution must have a current plan to preserve student records in the event they should cease to exist. This plan usually includes the agreement by another institution or organization to protect student records and provide transcripts of those records if the registered institution should cease to exist. There are no requirements concerning other institutional records.

MISSISSIPPI

Mississippi has not reported either legislation or regulations governing disposition of records of private institutions.

MISSOURI

Missouri has neither legislation nor regulations governing the disposition of records of private institutions.

MONTANA

Montana has neither legislation nor regulations governing disposition of records of private institutions.

NEBRASKA

Nebraska has neither legislation nor regulations governing disposition of records of private institutions. However, records of defunct colleges in Nebraska are retained and maintained by the University of Nebraska.

NEVADA

Nevada Revised Statutes, Chapter 394 states:

394.550 If any postsecondary education institution operating in this state proposes to discontinue its operation, the chief administrative officer of the institution shall file with the administrator original or true copies of all academic records of the institution specified by regulations of the commission. The records must include, as a minimum, academic information customarily required by colleges when considering students for transfer or advanced study; and, as a separate document, the academic record of each former student. If it appears to the administrator that academic records of an institution discontinuing is operations are in danger of being destroyed, secreted, mislaid or otherwise made unavailable to the commission, the administrator may seek a court order permitting the seizure of such records. The administrator shall receive and maintain a file of such records in his possession.

394.610 Any person or any owner, officer, agent or employee of

(a) . . . postsecondary educational institution who willfully fails or refuses to deposit with the commission . . . the records required by NRS . . . 394.550 is guilty of a misdemeanor. Each day's failure to comply with the provisions of such sections is a separate offense.

Regulations of the Commission on Postsecondary Education state:

7.510 A separate permanent file or folder must be maintained on each student and must include as a minimum:

(a) A copy of the enrollment contract or agreement completed and signed by the student and a representative of the school;

(b) A record of all payments made to the institution by the student and all refunds made by the institution to the student;

(c) A permanent record of progress, whether by completion of learning objectives or by grade;

(d) A record of attendance;

(e) All correspondence with the student pertinent to his education;

(f) A listing of appointments made by the school in assisting students to find employment, if applicable.

7.520 The student's complete file must be maintained for a minimum of 5 years after the end of training or withdrawal from the institution.

7.530 After 5 years, a perpetual file showing dates of attendance and transcripts must be maintained for each student.

7.540 In the event of closure of a school, student files are to be handled pursuant to NRS 394.550.

The Commission Manual on Procedure and Policy states:

6.105 A legal file record on a licensed school must be maintained for a minimum of five (5) years, after closure of a school. After five (5) years the file may be destroyed. However, a permanent card file must be maintained on the school. The card file will contain:

(10 Name of school
(2) Names of all licensees of the school
(3) Date of issuance and term of license(s)
(4) Subject matter or type of school licenses.

6.110 A permanent card file will be maintained on all agents issued Permits to Represent within the State. The card file will contain:

(1) Name of agent
(2) Name of school(s) represented
(3) Date(s) of issuance of Permit to Represent

6.115 An acceptable alternative to the permanent card file may be microfilming of the required information and inclusion of a security roll in the state archives.

The Commission staff works with the institution to assure that all students have been properly taken care of i.e., transferred to another institution, education completed, or appropriate refunds of student's tuition made.

NEW HAMPSHIRE

New Hampshire legislation states:

292:8-kk Reports Required. When any institution of higher learning ceases the regular conduct of instruction, either temporarily or permanently, whether or not the corporation is dissolved, the academic record, or a legible, certified copy thereof, of each student who has been registered for instruction at the institution shall be forwarded to the postsecondary education commission together with an explanation of the institution's credit and grading system. The postsecondary education commission shall preserve these records and upon request of the individual concerned shall furnish a certified copy, or reasonable number of such copies, of the individual's record. The fee for each record so furnished shall be one dollar, to be paid to said commission. Said fees shall be credited to the appropriation for said commission.

NEW JERSEY

New Jersey has neither legislation nor regulations governing the disposition of records of private institutions. The Department of Higher Education, however, requires institutions which surrender their operating licenses in this state to place their student records with other institutions of higher education.

NEW MEXICO

The New Mexico Post-secondary Educational Institution Act states:

21-23-15. Post-secondary educational institutions; termination of program

A. Notwithstanding any other provision of the Post-Secondary Education [Educational] Institution Act [21-23-1 to 21-23-14 NMSA 178], any post-secondary educational institution which offers, or represents that it offers, a basic academic education comparable to that provided by public colleges or universities or private, accredited colleges or universities, which is represented to be a part of a program culminating in the awarding of a degree or certificate of training, shall not terminate the program, nor shall the institution sell, dispose of or transfer substantially all of its assets until:

(1) the institution has made reasonable efforts (with another post-secondary educational institution which provides a basic academic education comparable to that provided by public colleges or universities, or private, accredited colleges or universities) to facilitate and provide for the transfer of the students, with a minimum loss of credit; and

(2) the post-secondary educational institution has made contractual arrangements for the perpetual care, maintenance and accessibility of all records, transcripts, reports and evaluations of all students receiving credit from the institution during the period of its existence.

B. Before any post-secondary educational institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the board of educational finance a summary of all actions taken pursuant to the requirements set forth in Subsection A of this section.

NEW YORK

New York statutes for the University of New York § 219 contain the following requirement:

4. Whenever the charter or incorporation of an institution is revoked or an order of dissolution made pursuant to the provisions of this section, it shall be the duty of the trustees and/or the custodians of the

permanent academic records of such institution to file the same with the state education department, or with such other agency as may be approved by said department where they shall be kept available for future reference. In the event, however, that an application is made to the supreme court for an order directing the disposition of assets of such educational corporation pursuant to the provisions of section two hundred twenty of this chapter and such order is thereupon made, the disposition of such permanent academic records may be directed therein. A copy of the order shall be filed with the education department by the applicant and such order shall so provide.

New York uses the American Association of Collegiate Registrars and Admissions Officers standards for preparation and safekeeping of student records. The State Education Department monitors the fiscal and academic strength of all postsecondary institutions and works with any which is planning a dissolution of charter or incorporation to ensure that the closure is as orderly as possible and protects students' interests. In most cases of a degree-granting institution's closure, a neighboring institution is secured as the official repository for students' transcripts. The Department maintains a list of defunct institutions and the locations of their students' records, so that these records are accessible. When there is no appropriate alternative, the Department becomes the repository and acts as official registrar for the defunct institution.

NORTH CAROLINA

The "Guidelines for Interpretation and Implementation" of the *Rules and Standards for Licensing Non-Public Educational Institutions to Confer Degrees,* p. 10, states:

(12) *Disposition of Records.* Provision should be made for the disposition of permanent records (transcripts) of students and other critical institutional records should the institution discontinue operation. Records are to be disposed of in accord with the regulations of the Division of Archives and History of the State of North Carolina.

The Division of Archives and History is willing to work with officials of discontinued institutions in effecting the disposition of records. They would be disposed of only with the approval of the Director of the Division of Archives and History of the State of North Carolina.

NORTH DAKOTA

North Dakota has neither legislation nor regulations governing the disposition of records of private institutions. As a matter of practice, records of closed institutions have been transferred to the University of North Dakota.

OHIO

Ohio has neither legislation nor regulations governing the disposition of records of private institutions. However, historically, neighboring institutions have assumed responsibility for student records.

OKLAHOMA

Oklahoma has not reported either legislation or regulations governing the disposition of records of private institutions.

OREGON

Oregon has regulations pertaining only to private colleges which are subject to state review for the conferring of degrees. Private institutions which are accredited by the regional accrediting association are exempt from this review. Consequently, a relatively small number of institutions must conform.

Administrative Rules Chapter 583, Division 30 583-30-035
(11) Records
(d) If any educational institution proposes to discontinue its operation, the chief administrative officer of the institution shall file with the Oregon Educational Coordinating Commission the original or legible true copies of all such information as is customarily required by colleges when considering students for transfer or advanced study, including but not necessarily limited to, all records required in section (10) and subsection (a) of this section. In the event it appears to the Commission that any such records of an educational institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Commission, the Commission may seek a court order to protect and, if necessary, take possession of the records. The Commission shall select an appropriate permanent location for such records.

PENNSYLVANIA

Pennsylvania has neither legislation nor regulations governing the disposition of records of private institutions.

RHODE ISLAND

Rhode Island has neither legislation nor regulations governing the disposition of records of private colleges.

SOUTH CAROLINA

South Carolina has neither legislation nor regulations governing the disposition of records of private colleges. In July, 1980, a three person committee representing the State Archives, the State Board of Education, and the South Carolina Commission of Higher Education was drafting such legislation.

SOUTH DAKOTA

South Dakota has neither legislation nor regulations governing the disposition of records of private colleges.

TENNESSEE

The manuscript department of the State Library has made provision to maintain the records of private institutions. Tennessee has neither legislation nor regulations governing the disposition of records at private colleges.

TEXAS

Texas has neither legislation nor regulation governing the disposition of records of private, regionally accredited institutions. The Texas Coordinating Board has the authority to acquire and store the student records of private, unaccredited institutions operating in Texas.

UTAH

Utah has neither legislation nor regulation governing the disposition of student records of private colleges.

VERMONT

Public Acts, 1979 (H. 435) states:

§ 175. POST SECONDARY EDUCATIONAL INSTITUTIONS: CLOSING

(a) When an institution of higher education, whether or not chartered in this state, proposes to discontinue the regular course of instruction, either permanently or for a temporary period other than a customary vacation period, the institution shall:

(1) promptly inform the state board;

(2) prepare the academic record of each current and former student in a form satisfactory to the state board and including interpretive information required by the board; and

(3) deliver the records to a person designated by the state board to act as permanent repository for the institution's records, together with the reasonable cost of entering and maintaining the records.

(b) Persons acting as repository may microfilm records received under this section.

(c) Students and former students of the discontinuing institution shall be entitled to verified copies of their records upon payment of a reasonable fee.

(d) When an institution of higher education is unable or unwilling to comply substantially with the record preparation and delivery requirements of subsection (a) of this section, the state board shall bring an action in superior court to compel compliance with this section, and may in a proper case obtain temporary custody of the records.

(e) When an institution of higher education is unable or unwilling to comply with the requirements of subsection (a) of this section, the state board may expend state funds necessary to ensure the proper storage and availability of the institution's records. The attorney general shall then seek recovery under this subsection, in the name of the state, of all of the state's incurred costs and expenses, ncluding attorney's fees, arising from failure to comply. Claims under this subsection shall be a lien on all the property of a defaulting institution, until all claims under this subsection are satisfied. The lien shall take effect from the date of filing notice thereof in the records of the town or towns where property of the defaulting institution is located.

(f) The state board shall adopt rules under this section for its proper administration. The rules may include provisions for preparing and maintaining transferred records. Persons acting as a repository of records are bound only by maintenance provisions which they agreed to before receiving transferred records.

The Division of Public Records, Agency of Administration, has been designated as the repository of student academic records.

VIRGINIA

Virginia has neither legislation nor regulations regarding disposition of student records of private colleges.

WASHINGTON

Washington legislation (effective January 1, 1980) requires that an educational institution proposing to discontinue operation shall file with the Council for Postsecondary Education original or legible true copies of all such educational records as may be specified. The agency shall maintain or cause to be maintained a permanent file of educational records coming into its possession.

WEST VIRGINIA

West Virginia has neither legislation nor regulations regarding disposition of student records of private colleges.

WISCONSIN

Although Wisconsin does not have legislation concerning the disposition of records of private institutions that cease to exist, provisions have been made for the custody of such records. In practice, the office of the State Archivist exercises jurisdiction over records entrusted to it. In recent closings and mergers other educational institutions assumed responsibility for student records. The Historical Society took custody of administrative records.

WYOMING

Wyoming has no private colleges.

PUERTO RICO

When an institution ceases operation it must provide means so that students can obtain information regarding the academic work they have performed. The institution will provide the documents in which necessary information is recorded. The institution, in order to inform interested parties on the adopted alternatives regarding arrangement and accessibility of the student's files, will publish a notice in a daily newspaper of general circulation in Puerto Rico.

APPENDIX 2:
STATE REGULATION OF THE DISSOLUTION OF NONPROFIT COLLEGES AND UNIVERSITIES

Prepared by the Center for Constitutional Studies, University of Notre Dame Law School, Edward McGlynn Gaffney, Jr., Associate Director

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Introduction

The 1979 decision of Judge John Keller of the Orphan's Court in Franklin County, Pennsylvania, that the trustees of Wilson College had acted wrongly in their decision to close the college on grounds of financial exigency sent a shock through the higher education community because it represented to many an unwarranted intrusion by the judiciary into academic affairs.[1] Mistaken impressions about what the judge did and did not say, and about the facts in the case have now been clarified by the chairperson of the Board of Trustees of Wilson College.[2] Two attorneys prominent in higher education law conclude that "perhaps the most important conclusion to be gleaned from this opinion is that trustees should make sure that they are fully informed, so that they will not be caught in a similar legal trap."[3] Part of the information required of members of governing boards is acquaintance with the legal fact that in the vast majority of American jurisdictions, if not in all of them, voluntary dissolution of a nonprofit educational institution will be supervised in varying degrees of intensity (or laxity) by a state judge or by some officer in the executive branch of state government, typically the office of the Secretary of State.

The following summary does not attempt to set forth an exhaustive statement of all the legal steps necessary in each jurisdiction in order to effectuate a decision to close down a college or to merge or consolidate it with another institution, nor should it be relied on as legal advice. It merely attempts to provide a brief sketch of the law in each jurisdiction relating to the merger, consolidation, and dissolution of non-profit colleges and to give to members of governing boards of these kinds of colleges and their attorneys a starting place for finding the law that may govern the sad necessity of "facing up to going down."[4] In order to avoid needless repetition, this report sets forth the details

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[1] *See e.g.*, Joseph C. Gies, "The Wilson College Case," *AGB Reports*, Vol. 22 No. 4 (1980) pp. 3-5.

[2] Elizabeth Hudnut Clarkson, "Ten Misconceptions About the Wilson College Case," *ibid.*, pp. 6-11.

[3] G. Philip Anderson and Kent M. Weeks, "The Lessons of Wilson" *ibid.*, pp. 12-15, at 15.

[4] Fred E. Crossland, "Facing Up to Going Down," *ibid.*, pp. 33-36.

of the Model Nonprofit Corporation Act and the *cy pres* doctrine only once, and then makes reference back to the state in which those matters are discussed.

It should be stressed that the legal aspects of dissolution by no means encompass the full human dimensions of the closing of a college which, as the Wilson College case remind us, may mean something quite different to its students, professors, alumni and alumnae than it does to its administrators and trustees or to the courts and other state officials supervising the dissolution. Sensitive administrators and trustees will realize this and will factor more than the law into their understanding of "the right way to close."[5]

Finally, I would like to express my gratitude to three of the interns of the Center for Constitutional Studies, Colleen McMullen, Bruce Peterson, and Catherine Valcourt, for their valuable assistance in this project, and to the Administrative Assistant of the Center, Mrs. Nancy Wesolowski, who produced the typescript in rapid order.

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[5]Thomas W. West, "The Right Way to Close," *ibid.*, pp. 37-44; *see* also Dr. West's *Marion College*, 1863-1967 (Strasburg, Va., 1979).

Alabama

I. Legal Basis

Merger, consolidation and dissolution are governed by the Alabama Nonprofit Corporation Act[1] if: (1) the private college was incorporated under the Act;[2] or (2) the college elects the reincorporate under the Act.[3] The Alabama Nonprofit Corporation Act closely follows the Model Nonprofit Corportion Act.[4] In addition, the doctrines of cy pres and approximation are means by which a court in Alabama can allow deviation from the terms of an existing charitable trust.[5] The doctrine of cy pres evolved in English courts of equity, and has been adopted in many American jurisdictions. If a gift is clearly for charitable purposes only, it will not be allowed to fail because the entity to benefited, or mode of application of the fund is uncertain. The donor must have had a general charitable intent, but the precise purpose is impossible, or has never existed, or has ceased to exist before the testator's death, or the purpose or institution has ceased to exist after the gift has taken effect. If the conditions are satisfied the court will apply the funds to another purpose or recipient as near as possible to that prescribed by the donor.[6]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is effective upon the filing of articles of merger, consolidation or dissolution in the office of the judge of probate in the appropriate country.[7] A college may be dissolved involuntarily by order of the circuit court in an action filed by the attorney general setting forth specific facts[8] alleging that the institution had procured its articles of incorporation fraudulently, or had abused the authority conferred upon it by law, or had failed to maintain a registered agent in the state.[9] Circuit courts likewise have jurisdiction to liquidate the assets of a college where a member of

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[1]Ala. Code § 10-3-1 through 10-3-172 (1977).

[2]*Id.*, § 10-3-3 (1977).

[3]*Id.*, For reincorporation procedure, see *Id.* § 10-3-4.

[4]American Law Institute, *Model Nonprofit Corporation Act* (revised 1964), Handbook "D" [hereinafter cited as Model Act].

[5]*Baxley* vs. *Birmingham Trust nat'l. Bank*, 334 So.2d 848 (Ala. 1976).

[6]D. Walker, *The Oxford Companion to Law* 329 (1980). *See generally* Fisch, *The Cy Pres Doctrine in The United States* (1950).

[7]In a merger or consolidation the appropriate county is the one in which the college was organized, Ala. Code § 10-3-143 (1977), and in a voluntary dissolution the appropriate county is the one where the college's principal office is established. *Id.* § 10-3-163.

[8]Moore v. Andalusia Hosp., 284 Ala. 259, 224 So. 2d617 (1969).

[9]*Id.*, § 10-3-164.

its governing board sets forth specific facts supporting a claim that the college is suffering irreparable injury by reason of a deadlock in the management of college's affairs, or that the acts of those in control of the college are "illegal, oppressive or fraudulent," or that the assets of the college are being missapplied or wasted, or that the college is unable to carry out its purposes.[10] And the circuit courts may involuntarily dissolve a college when a creditor shows that an insolvent college has filed to pay a legitimate debt.[11]

III. Recipients of Assets upon Dissolution

The Alabama Nonprofit Corporation Act closely follows the relevant provisions of the Model Act.[12] The Alabama Act provides that after the payment of all costs, liabilities and obligations,"[13] assets shall be distributed as follows:

(1) assets held upon condition requiring return of transfer because of the dissolution shall be returned or transferred;[14]

(2) assets subject to limitation permitting their use only for charitable, religious or educational purposes shall be transferred to another domestic or foreign organization engaged in substantially similar activities to those of the dissolving corporation;[15]

(3) other assets shall be distributed to members or others according to articles of incorporation or bylaws of the dissolving corporation;[16]

(4) any remaining assets may be distributed to the persons, non-profit or for-profit domestic or foreign corporations or organizations that may be specified in a plan of distribution.[17]

By a two-thirds vote of the members of the governing board, a dissolving college may adopt a plan for the distribution of its assets.[18]

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[10] *Id.*, § 10-3-165(1).
[11] *Id.*, § 10-3-165(2); see Model Act, § 51.
[12] *Model Act, supra*, § § 46, 47, 55.
[13] Ala. Code § § 10-3-161(1), 10-3-166(c)(1)
[14] *Id.*, § § 10-3-161(2), 10-3-166 (c)(2).
[15] *Id.*, § § 10-3-161(3), 10-3-166(c)(3).
[16] *Id.*, § § 10-3-161(4), 10-3-166(c)(4).
[17] *Id.*, § § 10-3-161(5), 10-3-166)(c)(5).
[18] *Id.*, § 10-3-162.

Alaska

I. Legal Basis

Corporations may be organized for educational purposes[1] under the Nonprofit Corporation Chapter of the Alaska Statutes.[2] Merger, consolidation and dissolution are governed by this chapter if the private college concerned is nonprofit.[3]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is subject to approval by the state Commissioner of Commerce. The superior courts have jurisdiction to dissolve a college involuntarily in an action filed by the attorney general alleging the college's (1) failure to file its annual report; (2) fraud in procuring its articles of incorporation; (3) abuse of authority; or (4) failure to name or change its registered agent.[4] As in Alabama, so also in Alaska a court of general jurisdiction may involuntarily dissolve a college and supervise the distribution of its assets in a case properly brought by a member of the governing board or a creditor of an insolvent college.[5]

III. Recipients of Assets

The Nonprofit Corporations chapter provides that the assets of a dissolving nonprofit corporation be distributed according to an schedule identical to that of the Model Nonprofit Corporation Act.[6]

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[1]Alaska Stat. §§ 10.20.005 et seq. (1968, Supp. 1979)
[2]*Id.*, §§ 10.20.216 - 10.20.450.
[3]*Id.*, §§ 10.20.256, 10.20.315 (1968).
[4]*Id.*, § 10.20.325.
[5]*Id.*, §§ 10.20.360 and 10.20.356; see discussion in Alabama, section II, *supra.*
[6]*Id.*, §§ 10.20.295, 10.20.395; see discussion in Alabama, section III, *supra.*

ARIZONA

I. Legal Basis

Educational corporations may be formed under the Non-profit Corporation Chapter of The Arizona Revised Statutes.[1] Merger, consolidation and dissolution are governed by the chapter if no part of the private college's income or profit is distributable to its members, officers or directors, except for a distribution upon dissolution.[2] Although the cy pres doctrine as administered by English courts has not formally been adopted in Arizona, uncertainty and indefiniteness as to the ultimate individual recipients are not fatal to the validity of a charitable gift sufficient in other respects.[3]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is effective upon delivery of the article of merger, consolidation or dissolution to the Arizona Corporation Commission, and determination by the Commission that the document appears to conform to the Nonprofit Corporation Chapter.[4] A private college may be dissolved involuntarily and its assets liquidated by order of the Superior Court[5] in an action filed by the State Attorney General because of fraud, abuse of authority or misrepresentation.[6] The Superior Court also has jurisdiction to liquidate a college's assets in an action properly brought by a member of the governing board or by a creditor.[7]

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[1]Ariz. Rev. Stat. Ann. §§ 10-1001 *et seq.* (Supp. 1979).

[2]*Id.*, § 10-1002(19), (21).

[3]*In Re Hayward's Estate*, 65 Ariz. 288, 178 P.2d 547 (1947). But a dictum in *Olivas v. Board of Nat'l. Missions of Presbyterian Church*, 1 Ariz. App. 543, 405 P.2d 481 (1965), states that cy pres applies to charitable trusts. For a discussion of the cy pres doctrine, see Alabama, Section I, *supra*.

[4]*Id.*, §§ 110-1042. 10-1050, 10-1002 (15).

[5]*Id.*, § 10-1053.

[6]*Id.*, § 10-1051.

[7]*Id.*, § 10-1054; *see* Model Act, § 51, and discussion in Alabama, Section II, *supra*.

III. Recipients of Assets upon Dissolution

The relevant provisions[8] closely follow the Model Nonprofit Corporation Act,[9] except that the Arizona Nonprofit Corporation Chapter requires any assets remaining after distribution according to the college's bylaws be transferred to an organization engaged in activities substantially similar to those of the dissolving college.[10] No nonprofit corporation may merge or consolidate with a corporation organized for profit unless the corporation surviving the merger or consolidation is a nonprofit corporation.[11]

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[8]Ariz. Rev. Stat. Ann., § § 10-1046, 10-1055 (Supp. 1979).
[9]*See* discussion in Alabama, Section III, *supra*.
[10]Ariz. Rev. Stat. Ann. § 10-1046(5) (Supp. 1979).
[11]*Id.*, § 10-1003(2).

ARKANSAS

I. Legal Basis

Private post-secondary educational institutions in Arkansas incorporate by presenting a charter for the proposed institution to the State Board of Eduction.[1] The Institutions of Learning chapter of the Corporations and Associations title of the Arkansas Statutes[2] does not provide a statutory procedure for merger, consolidation or dissolution of private colleges. Nor does the Arkansas Nonprofit Corporation Act[3] which, according to literal reading of its terms, appears to be inapplicable in most private colleges.[4] Therefore the legal bases for merger, consolidation and dissolution of private colleges are provided by the general chapters on merger and consolidation[5] and on dissolution[6] in the general title governing corporations and associations.[7]

The cy pres doctrine is applied in Arkansas when it becomes impossible or impracticable to administer a charitable trust according to its terms.[8]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is subject to approval by the Secretary of State.[9] Either the Circuit Court or the Chancery Court has jurisdiction to liquidate the assets of a corporation in an action brought by the corporation,[10] a shareholder, (or analogously by a member of the governing board in nonstock corporation) a creditor, or by the Attorney General when it has been established that liquidation should precede a decree of involuntary dissolution by the court.[11] Actions may be brought by these parties only in circumstances similar to those described in the Model Act.[12]

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[1]Ark. Stat. Ann. §§ 80-4905(e) (1980), 64-1409 (Supp. 1979).

[2]*Id.*, §§ 64-1401 through 64-1415 (1966, Supp. 1979).

[3]*Id.*, §§ 64-1901 through 64-1921 (1966, Supp. 1979).

[4]While nonprofit corporations may be organized for educational purposes, *Id.* § 64-1904 (1966), they must be incorporated by the State Board of Education. *See* n. 1 and accompanying text, *supra*. The provisions of the Nonprofit Corporation Act apply only to corporations organized under that Act or any act repealed by the Act. Neither category includes colleges incorporated under the Institutions of Learning Chapter.

[5]Ark. Stat. Ann. §§ 64-701 through 64-709 (1966, Supp. 1979).

[6]*Id.*, §§ 64-901 through 64-909.

[7]*Id.*, §§ 64-101 et. seq.

[8]*Sloan* vs. *Robert Jack Post No. 1322, V.F.W.*, 218 Ark. 917, 239 S.W. 2d 591 (1951).

[9]Ark. Stat. Ann. §§ 64-705, 64-902 (1966).

[10]*Id.*, § 64-906.

[11]*Id.*, § 64-908 (Supp. 1979).

[12]See Model Act. § 51, and discussion in Alabama section II, *supra*.

III. Recipients of Assets

The Dissolution and Liquidation chapter of the Corporations and Associations title does not provide a complete procedure for the distribution of assets belonging to a nonprofit college. The Chapter provides only for the distribution of the assets of a corporation to shareholders[13] and subscribers,[14] following the satisfaction of debts and liabilities. As was stated, above, however, the cy pres doctrine is followed in Arkansas.[15]

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[13]Ark. Stat. Ann. § § 64-903, 64-908 (1966, Supp. 1979).
[14]*Id.*, § 64-908 (Supp. 1979).
[15]See note 8, *supra*.

CALIFORNIA

I. Legal Basis

California recently repealed its former General Nonprofit Corporation Law[1] and replaced it with a new Nonprofit Corporation law that became operative on January 1, 1980.[2] Both laws provide for the creation of private nonprofit colleges.[3] Colleges incorporated under either law may dissolve and distribute assets under the present law.[4] In addition, the doctrine of cy pres is recognized in California courts.[5]

II. Approval of Dissolution

Each nonprofit college which was subject to the prior nonprofit law is now subject to the dissolution provisions of either the new Public Benefit Corporation Law,[6] the new Mutual Benefit Corporation Law,[7] or the new Religious Corporation Law[8] (all part of the present Nonprofit law) as determned by the type designated by statute in each new law.[9] Although each college formed under the former nonprofit law should have received a nonbinding advisory note indicating its classification under the present laws,[10] it appears that the most private nonprofit colleges will be governed by the "Public Benefit" law. Seminaries and Bible colleges, however, may fall under the Religious Corporation Law. The "Mutual Benefit" law expressly excludes corporations the assets of which are dedicated to charitable, religious, or public purposes.[11] The Religious Corporation law is limited to corporations formed primarily or exclusively for religous purposes.[12] The "Public Benefit" law, on the other hand, covers corporations formed for *any* public or charitable purpose.[13]

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[1]Cal. Corporations Code, § § 9000-9802 (repealed 1980).

[2]*Id.*, § § 5000-10846 (Supp. 1980).

[3]*Id.*, § 9200 (repealed 1980); *Id.*, § 5111 (Supp. 1980).

[4]*Id.*, § 9912(d) (Supp. 1980).

[5]*See*, e.g., *Hoyt* vs. *College of Osteopathic Physicians and Surgeons*, 61 Cal. 2d 750, 394 P.2d 932, 40 Cal. Rptr. 244 (1964), and *In re Loving's Estate*, 29 Cal. 2d 423, 175 P.2d 524 (1946). For a discussion of the cy pres doctrine, see Alabama, section I, *supra*.

[6]Cal. Corporations Code, § § 5110-6910 (Supp. 1980).

[7]*Id.*, § § 7110-8910 (Supp. 1980).

[8]*Id.*, § § 9110-9690 (Supp. 1980).

[9]*Id.*, § § 9912(d) (Supp. 1980).

[10]*Id.*, § 9912(b) (Supp. 1980).

[11]*Id.*, § 7111 (Supp. 1980).

[12]*Id.*, § 9111 (Supp. 1980).

[13]*Id.*, § 5111 (Supp. 1980).

Voluntary proceedings for dissolution under the "Public Benefit" law may be commenced upon the adoption of a resolution from within the college.[14] Approval of the Superior Court is required only if the court is petitioned by the college, its creditors, or the Attorney General.[15] Otherwise, the only approval required from outside the college is acceptance of a certificate of satisfaction of the Franchise Tax Board and of the certificate of dissolution by the Attorney General.[16] Dissolution of colleges under the Religious Corporation Law differs only slightly from the process described above.[17]

III. Distribution of Assets

After adequate provision has been made for the payment of debts and liabilities,[18] assets held by the college upon condition requiring a specific disposition upon dissolution must be distributed accordingly.[19] The remaining assets are to be disposed of pursuant to the college's articles or bylaws.[20] Distribution of these assets requires a decree of the Superior Court[21] unless written waiver of objections to the disposition is obtained from the Attorney General.[22]

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[14]*Id.*, § 6613 (Supp. 1980).
[15]*Id.*, § 6614 (Supp. 1980).
[16]*Id.*, § 6615(b) (Supp. 1980).
[17]*Id.*, § 9680 (Supp. 1980).
[18]*Id.*, § 6713 (Supp. 1980).
[19]*Id.*, § 6715 (Supp. 1980).
[20]*Id.*, § 6716(d) (Supp. 1980); *Id.*, § 9680(e)(1) (Supp. 1980).
[21]*Id.*, § 6716(b) (Supp. 1980); *Id.*, § 9680(e)(2) (Supp. 1980).
[22]*Id.*, § 6716(c) (Supp. 1980); *Id.* § 9680(e)(3) (Supp. 1980).

COLORADO

I. Legal Basis

A nonprofit[1] private college's merger, consolidation or dissolution is governed by the Colorado Nonprofit Corporation Act[2] if it is an educational corporation[3] organized under the Act or which elects to accept the Act.[4] The Colorado Supreme Court has ruled that Colorado courts may apply the doctrine of cy pres if that is necessary to keep a charitable gift from failing.[5]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution must be approved by the Secretary of State.[6] Any nonprofit college may be dissolved involuntarily by decree of the district court in an action filed by the attorney general because of fraud, abuse of authority, or failure to appoint or maintain a registered agent.[7] The district courts have the power to dissolve a college involuntarily and to liquidate its assets in an action properly brought by a member of the governing board, or by a creditor.[8]

III. Recipients of Assets

The Nonprofit Corporation Act provides[9] that the assets of a dissolving nonprofit corporation be distributed according to a schedule closely following that the Model Nonprofit Corporations Act.[10] The Colorado Act allows the distribution of any remaining assets to governmental entities and political subdivisions in addition to persons, societies, organizations or domestic or foreign corporations.[11]

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[1]"Nonprofit corporation" means a corporation or part of the income or profit of which is distributable to its members, directors, or officers, except to a member which is another nonprofit corporation. Colo. Rev. Stat. § 7-20-101 (10) (1973). The basic question is whether the corporation is being exploited for direct monetary gain. *People ex rel. Meiresonne* v. *Arnold*, 37 Colo. App. 414, 553 P.2d 79 (1976).

[2]Colo. Rev. Stat. §§ 7-25-101 et. seq. (1973, Supp. 1979).

[3]*Id.*, § 7-20-104 (1973).

[4]*Id.*, § 7-20-103.

[5]*Dunbar* v. *Board of Trustees of Clayton College*, 170 Colo. 327, 461 P.2d28 (1969); see discussion on cy pres doctrine in Alabama, section I, *supra.*

[6]Colo. Rev. Stat. §§ 7-25-104(2), 7-26-108(1) (1973).

[7]*Id.*, § 7-26-111(1).

[8]See *Id.*, § 7-26-111(2); see Model Act, § 51, and discussion in Alabama, section II, *supra.*

[9]Colo. Rev. Stat. § 7-26-103, 7-26-116 (1973, Supp. 1979).

[10]see discussion in Alabama, section III, *supra.*

[11]Colo. Rev. Stat. § 7-26-103(1)(e) (Supp. 1979).

CONNECTICUT

I. Legal Basis

The dissolution, merger and consolidation of private colleges are governed by provisions of the Connecticut Nonstock Corporation Law.[1] Connecticut courts may apply the cy pres doctrine where a testator has evidenced a "dominant intent to devote his property to some charitable use but circumstances are such that it becomes impossible to fulfill the particular method he directs, and courts then sanction its use in some other way which will, as nearly as may be, approximate his general intent."[2]

II. Approval of Dissolution

Voluntary proceedings for dissolution,[3] merger or consolidation[4] must be approved by the Secretary of State[5]. Upon the petition of a member, director, creditor or the dissolving corporation, the superior court for the county in which the principal office of the corporations is located may supervise the dissolution and distribution of the colleges' assets.[6]

III. Recipients of Assets

After the payment of all liabilities and obligations, the Nonstock Corporation Act provides: (1) Assets held upon a condition requiring return or transfer upon dissolution shall be returned or tranferred.[7] (2) Assets held subject to limitations permitting their use only for certain charitable, religious or educational purposes shall be transferred to another domestic or foreign corporation engaged in activities which are substantially similar to those of the dissolving corporation[8] pursuant to a plan of distribution.[9] (3) Other assets shall be distributed pro rata among the members, except to the extent that the certificate of incorporation determines the rights of members or provides for distributions to others.[10] (4) Any remaining assets may be distributed to the persons, nonprofit or for-profit corporations specified in the plan of distribution adopted by the dissolving corporation.[11]

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[1]Conn. Gen. Stat. Ann. §§ 33-476 through 33-497 (West 1960, Supp. 1980).

[2]*Howood House, Inc.* v. *Trustees of Donations and Bequest for Church Purposes, Inc.*, 27 Conn. Sup. 176, 233 A.2d 5 (1967).

[3]*Id.*, §§ 33-485 (1960).

[4]*Id.*, § 33-479.

[5]*Id.*, § 33-422 (Supp. 1980).

[6]*Id.*, §§ 33-491 (1960), 33-492 (Supp. 1980).

[7]*Id.*, § 33-490(2) (1960).

[8]*Id.*, § 33-490(3).

[9]*Id.*, § 33-487 (Supp. 1980).

[10]*Id.*, § 33-490(4) (1960).

[11]*Id.*, § 33-490(5).

DELAWARE

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by specific sections within the Delaware General Corporation Law.[1] The cy pres doctrine applies in Delaware when property is given in trust for a particular charitable purposes which is or becomes impossible or impractical to carry out.[2]

II. Approval of Dissolution

A merger, consolidation or dissolution is subject to approval by the Secretary of State.[3] Upon application of any creditor, stockholder, or other interested person, the Court of Chancery may appoint a receiver for the college's assets.[4] The Court of Chancery has jurisdiction over all questions arising from this application, and may make orders and issue injunctions required by justice and equity.[5]

III. Recipients of Assets

The subchapter on dissolution in the General Corporation Law provides only that upon dissolution a corporation's liabilities shall be discharged and any remaining assets shall be distributed to the corporation's stockholders.[6]

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[1]De. Code Ann. tit. 8, § § 255, 256 (Supp. 1980), § 276 (1974).

[2]*In Re Will of Potter,* 275 A.2d 574, 583 (Del. Ch. 1980); see also *Asche v. Asche,* 41 Del. Ch. 481, 199 A.2d 314, record remanded, 210 A.2d 306, on remand, 216 A.2d 272 (1964). For a discussion of the cy pres doctrine, see Alabama, section I. *supra.*

[3]Del. Code Ann. tit. 8, § § 255, 256 (Supp. 1980), § 275 (1974).

[4]*Id.,* § 279 (1974).

[5]*Id.,* § 280.

[6]*Id.,* § § 278, 281. Presumably, "stockholders" under § 276 would by implication include members of the governing board of an educational institution.

DISTRICT OF COLUMBIA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the District of Columbia Nonprofit Corporation Act[1] if the college is formed under the Act or elects to accept the provisions of the Act.[2] The cy pres doctrine applies where there is a general charitable purpose, but literal compliance with the terms of the trust has become impossible or impracticable; under these circumstances the trust is administered as nearly as possible in conformity with the donor's intention.[3]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is subject to approval by the Commissioners of the District of Columbia.[4] As part of the new D.C. charter of 1970[5] the Superior Court of the District of Columbia assumed from the United States District Court for the District of Columbia the authority to liquidate the assets and to supervise the affairs of a college in an action brought by: (1) a member or director; (2) a creditor; (3) the Commissioners when it appears that liquidation should precede the entry of a decree of dissolution; or (4) the dissolving college.[6] Actions brought by these parties are limited by language closely following that the Model Nonprofit Corporation Act.[7]

III. Recipients of Assets

The D.C. Nonprofit Corporation Act provides that assets of a dissolving nonprofit college shall be distributed according to a procedure[8] closely following that of the Model Nonprofit Corporation Act.[9]

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[1]D.C. Code Encycl. §§ 29-1039 through 29-1063 (1968, Supp. 1970).

[2]*Id.*, § 29-1003(a) (1968).

[3]*Connecticut College v. United States*, 107 U.S. Ap. D.C. 245, 276 F.2d 491 (1960). For a discussion of the cy pres doctrine, see Alabama, section I, *supra*.

[4]D.C. Code Encycl. §§ 29-1042, 29-1052 (1968).

[5]See Pub. L. 93-198, Title IV, § 431(a), 87 Stat. 774, D.C. Code Encycl. (1978 Supp. to vol. one, p. 42).

[6]D.C. Code Encycl. § 29-1055 (Supp. 1970).

[7]*Id.*, See discussion in Alabama, section II, *supra*.

[8]D.C. Code Encycl. §§ 29-1048, 29-1056(c) (1968).

[9]See discussion in Alabama, section III, *supra*.

FLORIDA

I. Legal Basis

The creation[1] as well as the dissolution[2] of nonprofit private colleges in Florida is governed by the chapter of the Florida corporate statutes relating to not-for-profit corporations. In addition, Florida courts may apply the cy pres doctrine if necessary.[3]

II. Approval of Dissolution

Voluntary dissolution of such a corporation entails five steps: (1) a petition to the local circuit court; (2) publication of direct notice; (3) a decree of dissolution by the judge; (4) filing of the decree with the Department of State, and (5) recordation of decree in the circuit court which approved the corporate charter.[4] The circuit judge not only must approve the dissolution, but also is charged with satisfying the claims of creditors and distributiong the remaining assets.[5] The merger or consolidation of a college with another nonprofit corporation is conditioned upon the approval of articles of merger for consolidation by the Department of State.[6]

III. Recipients of Assets

Since the governing statue is not specific in limiting distribution of assets, the court must rely on the judicial doctrine of cy pres and its own discretion to determine recipients.[7]

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[1]Fla. Stat. Ann. § 617-01.

[2]*Id.*, § 617.05.

[3]*See Jewish Guild for the Blind* v. *First Nat'l. Bank*, 226 So.2d 414, 416 (Fla. April 1969) (recognizing of *cy pres* doctrine in dictum). For a discussion of the cy pres doctrine, see Alabama, section I, *supra*.

[4]Fla. Stat. Ann. § 617.05(1).

[5]*Id.*

[6]*Id.*, §§ 617.051 to 617.054.

GEORGIA

I. Legal Basis

The dissolution, merger and consolidation of private colleges are governed by provisions of the Georgia Nonprofit Corporation Code.[1] In addition, the Georgia Supreme Court has ruled that if it is impossible to execute the terms of a validly probated will, a court of equity in Georgia must execute it by approximation.[2]

II. Approval of Dissolution

When a college dissolves voluntarily[3] or merges or consolidates with another college,[4] it must submit articles for merger, consolidation or dissolution to the Secretary of State. If the Secretary finds the articles to be in proper form, they are approved and a certificate is issued.[5] The dissolution may be supervised by the Superior Court of the county in which the dissolving corporation's registered office is located, in an action by: (1) a member or director; (2) a creditor; or (3) the dissolving corporation. An involuntary dissolution will also be supervised by the superior courts in an action brought by the Attorney General because of fraud or violation of the Nonprofit Corporation Code.[6]

III. Recipients of Assets

After the payment of all court costs, liabilities and obligations, the Georgia Code provides: (1) Assets held upon a condition requiring return or transfer upon dissolution shall be returned or transferred.[7] (2) Assets held subject to limitations permitting their use only for certain charitable, religious or educational purposes shall be transferred to another domestic or foreign corporation engaged in activities which are substantially similar to those of the dissolving corporation,[8] pursuant to a plan of distribution.[9] (3) Other assets shall be distributed in accordance with the provisions of the articles of

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[1]Ga. Code Ann. §§ 22-2901 through 22-3120 (1977, Supp. 1980).

[2]*Freedman v. Scheer*, 223 Ga. 705, 157 S.E. 2d 875 (1967). For a discussion of the cy pres doctrine, see Alabama, section I, *supra*.

[3]Ga. Code Ann. §§ 22-3101 through 22-3108.

[4]*Id.*, §§ 22-2901 through 22-2096 (1977).

[5]*Id.*, § 22-1004 (Supp. 1980) (Merger and Consolidation); *Id.*, § 22-3107 (Dissolution)

[6]*Id.*, § 22-3108 (Supp. 1980).

[7]*Id.*, §§ 22-3112(c)(2), 22-3103(b).

[8]*Id.*, §§ 22-3113(c)(3), 22-3103(c).

[9]*Id.*, § 22-3104.

incorporation or the bylaws of the dissolving corporation to members or others.[10] (4) Any remaining assets may be distributed by persons, organizations and domestic or foreign non-profit and for-profit corporations, as may be specified in a plan of distribution.[11]

[10] *Id.*, §§ 22-3113(c)(4), 22-3103(d).
[11] *Id.*, §§ 22-3112(c)(5), 22-3103(e).

HAWAII

I. Legal Basis

Dissolution provisions of the General Corporations chapter of the Hawaii Revised Statutes[1] apply to colleges organized as nonprofit corporations.[2] The merger or consolidation of nonprofit colleges is governed by the subchapter on Consolidation and Merger of Corporations.[3] There is no reported Hawaii decisions accepting the doctrine of cy pres in that jurisdiction.

II. Approval of Dissolution

Merger, consolidation or voluntary dissolution proceedings are subject to approval by the Director of Regulatory Agencies.[4] If a college (1) fails for two years to file an annual statement; (2) ceases to have any assets and fails to function; (3) fails to apply for a renewal of its charter or articles of incorporation; or (4) is adjudicated a bankrupt, the Director of Regulatory Agencies may declare the corporation dissolved.[5] Upon voluntary dissolution the Director of Regulatory Agencies shall appoint a trustee to settle the affairs of the corporation, and the Director of Regulatory Agencies may do the same upon an involuntary dissolution.[6] Trustees are to settle the corporation's affairs according to statute and file a final account with the Director of Regulatory Agencies.[7] Additionally, any member or creditor may file a suit in the circuit court if the trustee's account is unsatisfactory.[8] The circuit courts also have jurisdiction to dissolve and liquidate the assets of a corporation when the directors are deadlocked in the management of the corporate affairs.[9]

III. Recipients of Assets

Hawaii statutory law does not clearly provide for the distribution of a nonprofit college's assets remaining after debts and expenses are paid. The General Corporations chapter provides only a broad power to the trustee

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[1]Hawaii Rev. Stat. §§ 416-121 through 416-128 (1976, Supp, 1979).
[2]*Id.*, § 416-2 (1976).
[3]*Id.*, §§ 417-51 through 417-59.
[4]*Id.*, §§ 417-58, 416-121.
[5]*Id.*, § 416-122 (1976, Supp. 1979).
[6]*Id.*, § *416-123.*
[7]*Id.*, § 416-125 (1976).
[8]*Id.*
[9]*Id.*, § 416-128 (1976, Supp. 1979).

appointed after dissolution to: (1) sell and dispose of property, speedily winding up the corporation; (2) to file bills for instructions in any court of competent jurisdiction on any matters concerning the administration of assets; and (3) to divide among members money and property they are entitled to under the charter of the corporation after paying debts and expenses.[10]

[10] *Id.*, § 416-124 (1976).

IDAHO

I. Legal Basis

Private colleges are among the corporations which may be formed under the Idaho Nonprofit Corporation Act.[1] That Act[2] provides that nonprofit corporations shall be governed by the Business Corporation Act[3] except when it is inconsistent with the Nonprofit Corporation Act; since the Nonprofit Corporation Act is silent on the dissolution of such corporations, the dissolution of a college is governed by the relevant provisions in the Business Corporation Act.[4] There are no reported Idaho decisions applying the cy pres doctrine in that jurisdiction.

II. Approval of Dissolution

If a corporation follows the statutory procedure for voluntary dissolution,[5] including the satisfaction of its liabilities and obligations and the filing of articles of dissolution, its dissolution is approved only by the Secretary of State.[6] The corporation of any creditor or any other interested person[7] may, at any time during the liquidation process, petition the Idaho district court of the county in which the registered office or principal place of business of the corporation is located, to have the liquidation continued under the supervision of the court.[8] In such a case, or when the Idaho Attorney General has filed an action for involuntary dissolution because of a fraud, abuse of corporate authority or failure to maintain a registered agent,[9] the district courts have jurisdiction to supervise the dissolution[10] and will enter a decree of dissolution.[11]

III. Recipient of Assets upon Dissolution

The Nonprofit Corporation Act provides generally that no dividends or share of a nonprofit corporation's income shall be distributed to members, directors, or officers of the corporation, except upon dissolution of the

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[1]Idaho Code § 30-306 (1980).
[2]*Id.* §§ 30-301 through 30-332 (1980, Supp. 1980).
[3]*Id.*, §§ 30-1-1 through 30-1-1 through 30-1-152.
[4]*Id.*, §§ 30-1-82 through 30-1-105.
[5]*Id.*, §§ 30-1-82 through 30-1-93.
[6]*Id.*, § 30-1-93 (1980).
[7]*Id.*, § 30-1-87.
[8]*Id.*
[9]*Id.*, § 30-1-94.
[10]*Id.*, § 30-1-97.
[11]*Id.*, § 30-1-102.

corporation.[12] Distribution to those parties is also limited by other general provisions of the Act. Beyond this, however Idaho law does not limit the class of recipients to which the assets of a private college can be distributed upon dissolution. Although, as was stated above, there are no Idaho cases dealing with the application of the doctrine of cy pres to charitable gifts, an Idaho court might apply that doctrine in an appropriate case, if only because of the lack of attention by the state legislature to the problem of distribution of the assets of a dissolving nonprofit corporation.

[12] *Id.*, § 30-320.

ILLINOIS

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Illinois General Not for Profit Corporation Act[1] if: (1) they are formed under the Act;[2] (2) they were formed under a section repealed when the General Not for Profit Act was passed;[3] or (3) they were formed under other laws of the State for a purpose for which a corporation might be organized under the General Not for Profit Act, and elect to accept coverage of the Act.[4] In addition, the Illinois Supreme Court has ruled that Illinois courts should apply the cy pres doctrine to carry out the general charitable purposes of a trust.[5]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is subject to approval by the Secretary of State.[6] Courts of equity have power to involuntarily liquidate the assets of a college and to manage its affairs under a provision which closely follows that of the Model Nonprofit Corporation Act.[7]

III. Recipients of Assets

The General Not for Profit Corporation Act provides that a dissolving college's assets are to be distributed according to a procedure closely following that of the Model Nonprofit Corporation Act.[8]

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[1]Ill, Ann. Stat. ch. 32, § § 163a37-163a61 (Smith-Hurd, 1970, Supp. 1980).

[2]*Id.*, § 163a2(a) (1970).

[3]*Id.*, § 163a2(b). Sections 156-163 of ch. 32 were repealed.

[4]*Id.*, § § 163a2(c), (d).

[5]*Community Unit School Dist. No. 4 v. Booth,* 1 Ill. 2d 545, 116N.E.2d 161 (1953), and see *Bruce v. Maxwell,* 311 Ill. 479, 143 N.E. 82 (1924). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[6]*Id.*, § § 163a40, 163a48.

[7]*Id.*, § 163a53 (Supp. 1980). *See* discussion in Alabama, section, II, *supra.*

[8]Ill. Ann. Stat. ch. 32, § § 163a44, 163a54 (Smith-Hurd, 1970).

INDIANA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges in Indiana are governed by the state's Not-for-Profit Corporation Act.[1] The provision of this Act cover both voluntary and involuntary dissolutions.[2] In addition, the doctrine of cy pres has been adopted by the state courts where necessary to carry out the donor's intent.[3]

II. Approval of Dissolution

Before distributing its property, a dissolving corporation must first notify the unclaimed property section of the Attorney General's office, the Department of Revenue, and the Indiana Employment Security Division, and it must publish a notice of intent to dissolve.[4] After the assets are distributed, the corporation must file articles of dissolution with the Secretary of State who will then issue a certificate of dissolution if the articles conform to law.[5] The procedures for involuntary dissolution authorize the Attorney General, when requested by the Secretary of State, to bring action in circuit or superior courts if the corporation has been involved in fraud, abused its legal authority, failed to file annual reports or has done any other act which will require forfeiture of its charter.[6] Members can also bring liquidation actions when the corporation is suffering from a management deadlock.[7]

III. Recipients of Assets

Under Indiana law, a dissolving college may elect to hand over its assets and liabilities to the local public school corporation. If the school board declines this offer within 120 days, the assets may be offered to the county in which the college is located and if the county refuses to accept the offer within 120 days, the property and assets of the college vest in the common school fund of the state.[8] The college is, of course, not bound to offer its assets to the local or county or state government. If it chooses to distribute its assets differently,

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[1]Ind. Code Annot. § § 23-7-1.1-2, 4 (Burns 1972).

[2]*Id.*, § § 23-7-1.1-33 to 66 (Burns 1972 and Supp. 1979).

[3]*See, e.g., Sendak v. Trustees of Purdue Univ.*, 151 Ind. App. 372, 279 N.E. 2d 840 (1972). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[4]Ind. Code Annot. § 23-7-1.1-33(3) (I, II) (Burns 1972).

[5]*Id.*, § 23-7-1.1-33(5) and (6).

[6]*Id.*, § 23-7-1.1-66(a) (1-5) (Burns 1972).

[7]*Id.*, § 23-7-1.1-66(a) (6)

[8]*Id.*, § 23-13-5-5, (Burns, 1972).

however, it must do so in the following sequence: (1) pay all valid debts and liabilities; (2) pay members according to their interests; (3) transfer remaining assets to other non-profit corporation organized for substantially the same purposes as the dissolving college; finally, any remaining assets escheat to the state treasury.[9] If a college is involuntarily dissolved, its assets are to be distributed by a receiver in the same manner as if the corporation had voluntarily sought dissolution.[10]

[9] *Id.*, § 23-7-1.1-33(3) (III-V) (Burns 1972).
[10] *Id.*, § 23-7-1.1-66(b) (Burns 1972).

IOWA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Iowa Nonprofit Corporation Act[1] if they are formed under the Act or voluntarily elect to be covered by the Act.[2] Cy pres is applied by Iowa courts when a charitable trust fails without any alternative disposition of the property and the general trust purposes may be accomplished by administering the property in a different but closely related way.[3]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is subject to approval by the Secretary of State.[4] Articles must also be filed with the recorder in the county where the college was located and in merger or consolidation proceedings where it will be located.[5] Courts of equity have jurisdiction to liquidate the assets of a college in an action brought by:

(1) a member or director because of dead-locked management or directors, illegal or fradulent acts by management or directors, or misapplication or waste of college assets;[6]

(2) a creditor, when the claim has been reduced to an unsatisfied judgment or when the college has admitted in writing that the claim is due and owing, and it is established that the college is insolvent;[7]

(3) the dissolving college;[8] or

(4) the attorney general because of fraud, failure to file its annual report, abuse of authority, or failure to name or maintain a registered agent, when it is established that liquidation should preceed a decree of involuntary dissolution.[9]

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[1]Iowa Code Ann. § § 504A.40-504A.64 (West, Supp. 1980).

[2]*Id.*, § 504A.100.

[3]*See*, e.g., *Simmons v. Parsons College*, 256 N.W. 2d 225 (Iowa 1977). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[4]Iowa Code Ann. § § 504A.43, 504A.52 (West, Supp. 1980).

[5]*Id.*

[6]*Id.*, § 504A.56(1).

[7]*Id.*, § 504A.56(2).

[8]*Id.*, § 504A.56(3).

[9]*Id.*, § 504A.56(4).

These provisions closely follow those of the Model Nonprofit Corporation Act.

III. Recipients of Assets

The Iowa Nonprofit Corporation Act provides that a dissolving college's assets are to be distributed according to a procedure closely following that of the Model Nonprofit Corporation Act.[10]

[10] *Id.*, §§ 504A.48, 504A.57.

KANSAS

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges in Kansas are governed by the state's General Corporation Code.[1] The cy pres doctrine applies to charitable trusts when the trust fails without any alternative disposition of the property having been made, and the general trust purposes can be accomplished by permitting administration in a different but closely related manner.[2]

II. Approval of Dissolution

A merger, consolidation or dissolution is subject to approval by the Secretary of State.[3] Upon application of any creditor, stockholder or other interested person, the district courts may appoint a trustee or receiver for the college's assets.[4] The district courts have broad jurisdiction over all questions arising in these proceedings, and may make orders and issue injunctions required by justice and equity.[5]

III. Recipients of Assets

The article dealing with dissolution in the General Corporation Code of Kansas provides only that upon dissolution a corporation's liabilities shall be discharged and any remaining assets shall be distributed to the corporation's stockholders.[6] If only because of the lack of attention paid to the complexity of this issue by the legislature, Kansas courts would undoubtedly rely on the cy pres doctrine in overseeing the dissolution of a college.

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[1]Kan. Stat. Ann., § § 17-6705, 17-6706, 17-6805 (1974).

[2]*Nelson v. Kring*, 225 Kan. 499, 592 P.2d 438 (1979). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[3]Kan. Stat. Ann., § § 17-6705, 17-6706, 17-6805, 17-6003 (1974.)

[4]*Id.*, § 17-6808.

[5]*Id.*, § 17-6809.

[6]*Id.*, § § 17-6807, 17-6810.

KENTUCKY

I. Legal Basis

The Kentucky statutes relating to educational societies and nonprofit corporations govern the incorporation and dissolution of private colleges in Kentucky.[1] The provisions for voluntary dissolution are identical with the corresponding provisions of the Model Nonprofit Corporation Act.[2] In addition, the Kentucky Supreme Court has ruled that under some circumstances the doctrine of cy pres is to be applied in Kentucky courts.[3]

II. Approval of Dissolution

Voluntary dissolution of a nonprofit educational institution in Kentucky is set in motion by a vote of at least two-thirds of the members of the governing board.[4] The governing board is likewise responsible for winding up the business of the institution and for distributing its remaining assets.[5] When proper articles of dissolution have been prepared,[6] they must be submitted in triplicate to the Secretary of State, who must review this document to determine that it conforms to Kentucky law.[7] If he determines that this is the case, he issues a certificate of dissolution, and one of the triplicate originals of the articles of dissolution is filed with the clerk of the county court in the county in which the college or university is situated. An educational institution may be dissolved involuntarily by a decree of the circuit court when the Attorney General establishes in an appropriate action that the institution (1) is guilty of abuse or misuse of its corporate powers or has become "detrimental to the interest and welfare of the commonwealth of Kentucky or its citizens,"[8] or (2) that the college or university had procured its articles of incorporation through fraud, or (3) that it has failed to file the annual report required under Kentucky law, or to appoint and maintain a registered agent in the state and to notify the Secretary of State of any change of its registered agent.[9]

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[1]Ky. Rev. Stat. Ann., § § 273-060 *et. seq.*

[2]Compare Ky. Rev. Stat. Ann., § § 273-300 to 273.315 with Model Act, § § 45-50 (1964), cited in Alabama, section I, *supra.*

[3]*Defenders of Furbearers v. First National Bank and Trust Co., 306 S.W. 2d 102 (Ky. App. 1957);* and *see Kentucky Children's Home v. Woods,* 289 Ky. 20, 157 S.W. 2d 473 (1941).

[4]Ky. Rev. Stat. Ann., § 273-300.

[5]*Id.*, § § 273-300, 273.303, and 273.307.

[6]*Id.*, § 273.313.

[7]*Id.*, § 273.317

[8]*Id.*, § 273.320.

[9]*Id.*

III. Recipients of Assets

The Kentucky statute governing distribution of assets of a dissolving college is patterned on the Model Nonprofit Corporation Act.[10]

[10]*Id.*, § 273.303; for a discussion of the Model Act, *see* Alabama, section III, *supra*.

LOUISIANA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Louisiana Nonprofit Corporation Law.[1] In addition, the cy pres doctrine has been adopted by statute.[2]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is subject to approval by the Secretary of State.[3] The proceeding for dissolution is commenced by a two-thirds vote of the members of the governing board or of the college's incorporators.[4] In addition, a proceeding for involuntary dissolution may be brought in any court of competent jurisdiction by: (1) a member; (2) a creditor whose claim has been reduced to judgment and has been returned without being paid; or (3) a receiver appointed to take charge of the college's property.[5] In an action brought by a proper party for involuntary dissolution it must be made to appear that:

1. Assets are insufficient to pay debt or provide reasonable security to those dealing with the corporation.
2. The objects of the corporation have failed, been abandoned, or are impracticable;
3. It is beneficial to the members that the corporation be dissolved.
4. The directors or members of the governing board are deadlocked.
5. The corporation has been guilty of gross or persistent acts outside its authority; or
6. The corporation's articles have been cancelled by state because of fraud, illegality of formation or failure to name and maintain a registered agent; or
7. A receiver has been appointed to take charge of the corporation's property.[6]

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[1]La. Rev. Stat. Ann., § § 12.242 *et seq.* (West, 1969, Supp. 1980).
[2]*Id.*, § 9.2331 (Supp. 1980).
[3]*Id.*, § § 12.243(F) (Supp. 1980), 12.250 (1969).
[4]*Id.*, § 12.201(8) (1969).
[5]*Id.*, § 12.250(a) (1969).
[6]*Id.* § 12.251(A) (Supp. 1980)

The court may appoint a "judicial liquidator,"[7] and may appoint a receiver for a dissolving college or university.[8]

III. Recipients of Assets

The Louisiana Nonprofit Corporation Law provides that the net assets[9] of some nonprofit corporations may be distributed to members according to their respective interests.[10] As either religious or charitable corporations, however, nonprofit institutions of education would be excluded from this exemption and would be bound by the general norm prohibiting distribution of assets to the members of a nonprofit corporation. In the event of dissolution, then, a Louisiana college should provide for the distribution[11] of its assets to a corporation with similar purposes.[12] If the dissolution is involuntary, the court's order shall state the distribution of any net assets.[13]

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[7]*Id.*, § 12.251(E). According to § 12.252(A) the judicial liquidator may but need not be a member of the governing board.

[8]*Id.*, § 12.258 and 259 (1969).

[9]The assets after discharge of debts and liabilities.

[10]La. Rev. Stat. Ann., § 12.249(B) (West, 1969).

[11]*Id.*, § 12.250(B).

[12]*Id.*, § 12.249(B).

[13]*Id.*, § 12.256(A).

MAINE

I. Legal Basis

The merger, consolidation or dissolution of a private nonprofit college is governed by the Maine Nonprofit Corporation Act[1] if the college was created under the act or as a nonstock corporation under a prior general or special act.[2] In addition, Maine courts will apply the doctrine of cy pres to carry out the general charitable intention of a valid charitable trust if it is impossible or impractical to carry out the specific purpose of the trust.[3]

II. Approval of Dissolution

A merger, consolidation or voluntary dissolution is approved by the Secretary of State.[4] Courts of equity have jurisdiction to dissolve a nonprofit corporation, to liquidate its assets and to arrange its affairs as a result of an action brought by: (1) a member or director; (2) a creditor; (3) the corporation itself; or (4) the attorney general. Liquidation of assets precedes the entry of a decree of dissolution.[5]

III. Recipients of Assets

The Maine Nonprofit Corporation Act provides that in voluntary dissolution proceedngs assets are to be distributed among the corporation's members according to their interests or the corporation's bylaws.[6] The assets of colleges and other educational corporations, however, shall be transferred only to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving college.[7] The statutory procedure for liquidating a college's assets under court supervision[8] closely follows that of the Model Nonprofit Corporation Act.[9]

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[1]Me. Rev. Stat. Ann., tit. 13-B, § § 901-906; § § 1101-1111 (Supp. 1980).

[2]*Id.* § 103.

[3]Petition of Pierce, 153 Me. 180, 136 A.2d 510 (1957). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[4]Me. Rev. Stat. Ann., tit. 13-B, § § 904-1104.

[5]*Id.*, § 1105.

[6]*Id.*, § 1104(d).

[7]*Id.*

[8]*Id.*, § 1106(3)

[9]*See* discussion in Alabama, section III, *supra.*

MARYLAND

I. Legal Basis

Corporations may be organized for educational purposes[1] under the Maryland General Corporation Law,[2] subject to some special provisions found in the statutes governing Nonstock Corporations.[3] The consolidation, merger or dissolution of a nonprofit college and university is governed by these two statutes.[4] In addition, Maryland courts are empowered both by statute and by common law decisions to apply the cy pres doctrine when necessary.[5]

II. Approval of Dissolution

The consolidation, merger or voluntary dissolution takes effect when the State Department of Assessment and Taxation accepts the articles of consolidation, mergr, or dissolution.[6] A private college may be dissolved involuntarily and its assets liquidated by an order of the Circuit Court[7] in an action authorized by the State Department of Assessments and Taxation and filed by the Attorney General alleging abuse of powers.[8] The Circuit Court also has jurisdiction to liquidate a college's assets in an action properly brought by a membr[9] of the corporation or by a creditor.[10]

III. Recipients of Assets

The Maryland statute[11] closely follows the Model Nonprofit Corporation Act.[12] One minor variation from the Model Act is that the Maryland Nonstock Corporations Law requires that there be a plan of distribution to transfer assets

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[1]Md. Ann. Code, § 2-101 *et seq.*

[2]*Id.* § § 1-103 (Supp. 1979).

[3]*Id.* § 5-20 *et seq.* (1975, Supp. 1979).

[4]*Id.*, § § 3-101 *et seq.*, and 5-207 (Supp. 1979) (consolidations and mergers); § § 3-401 *et seq.*, and 5-208 (Supp. 1979) (dissolutions).

[5]Maryland has adopted the Uniform Charitable Trusts Administration Act, Md. Ann. Code, § 14-302. *See also Gordon v. City of Baltimore*, 258 Md. 682, 267 A.2d 98 (1970), and *Wesley Home, Inc. v. Mercantile Safe Deposit and Trust Co.*, 265 Md. 185, 289 A.2d 337 (1972). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[6]*Id.* § § 3-113 and 5-207 (Supp. 1979) (consolidations and mergers); § § 3-408 and 5-208 (Supp. 1979) (dissolutions).

[7]*Id.*, § 1-101(g) (Supp. 1979).

[8]*Id.*, § 3-514.

[9]*Id.*, § 1-101(t).

[10]*Id.*, § § 3-413-3-415.

[11]*Id.*, § 5-208(b).

[12]For a discussion of the Model Act see Alabama, section III, *supra.*

held for "educational purposes only" to a corporation having a similar purpose, or to a corporation associated or connected with the dissolving college.[13]

[13] *Id.*, § 5-208(G)(4).

MASSACHUSETTS

I. Legal Basis

Corporations may be organized for educational purposes under the Corporations for Charitable Purposes Chapter[1] of the Massachusetts Statutes.[2] Consolidation, merger, and dissolution are governed by this chapter if the private college concerned is nonprofit.[3] The Supreme Judicial Court of Massachusetts has ruled that Massachusetts courts should apply the doctrine of cy pres when necessary.[4]

II. Approval of Dissolution

A consolidation or merger takes effect when the Supreme Judicial Court

A consolidation or merger takes effect when the articles of consolidation or merger are filed with the Secretary of State.[5] A voluntary dissolution takes effect when the Supreme Judicial Court issues a decree of dissolution.[6] A private college may be dissolved involuntarily and its assets liquidated by an order of the Supreme Judicial Court when petitioned by the Attorney General alleging (1) that the corporation failed to file annual financial reports; (2) that the corporation has become inactive; or (3) that dissolution is in the public interest.[7]

III. Recipients of Assets upon Dissolution

The Corporations for Charitable Purposes Chapter provides that the funds for a dissolving charitable corporation be administered for such similar public charitable purposes as the court may determine.[8]

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[1]Mass. Ann. Laws, ch. 180, § 4. (1977, Supp. 1979).

[2]*Id.*, ch. 180, § 1 *et seq.*

[3]*Id.*, ch. 180, § § 10-11B.

[4]*First Church in Somerville v. Attorney General,* 376 N.E. 2d 1226 (Mass. 1978); for a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[5]*Id.*, ch. 180, § § 10-10A, ch. 156B § 78(d)(4).

[6]*Id.*, ch. 180, § 11A.

[7]*Id.*, ch. 180, § 11B.

[8]*Id.*, ch. 180, § 11B. Compare *Model Nonprofit Corporation Act* with MASS. ANN. LAWS, ch. 180A (Management of Institutional Funds).

MICHIGAN

I. Legal Basis

Many private colleges in Michigan have been created by specific statutes,[1] but they may also be incorporated under a general educational corporations statute. Specific statues have dissolved individual nonprofit educational corporations.[3] Corporations possess the general power to dissolve[4] according to the methods provided by statute.[5] In addition, Michigan courts recognize and will apply the doctrine of cy pres when necessary.[6]

II. Approval of Dissolution

The Attorney General is a necessary party to any action for dissolution before the circuit courts,[7] and notice must be provided to him by registered mail at least 45 days prior to the filing of any document related to the dissolution.[8] The Attorney General may consent to dissolution without court proceedings,[9] in which case articles of dissolution are filed with the Corporation and Securities Commission.[10]

III. Recipients of Assets

Unless the articles of incorporation provide otherwise, the shareholders of a nonprofit corporation are entitled to a distribution of no more than the original subscription price.[11] Shares of a nonprofit corporation are not transferable absent an express provision in the corporation's bylaws.[12] This

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[1]*See,* e.g., Mich. Comp. Laws Ann. § § 390.751 through 390.760 (1976) (Kalamazoo College); *Id.* § § 390.701 through 390.708 (1976) (Albion College)

[2]*Id.*, § 450.170 (1973).

[3]*See,* e.g., *Id.*, § 450.167a (Henry Ford Trade School)

[4]*Id.*, § 450.1801 *et seq.* (1973, Supp. 1980).

[5]*Id.* § 450.1801 *et seq.* (1973, Supp. 1980).

[6]*See,* e.g., *Gifford v. First National Bank*, 285 Mich. 58, 280 N.W. 108 (1938); and *In Re Road's Estate,* 41 Mich. App. 405, 200 N.W. 2d 728 (1972). For a discussion of cy pres, see Alabama, section I, *supra.*

[7]*Id.*, § 450.251 (1973).

[8]*Id.*

[9]*Id.*

[10]*Id.*, § 450.1803, 450.1804; *Id.*, § 450.251.

[11]*Id.*, § 450.119.

[12]*Id.*

same section states, however, that it should not be construed to authorize the diversion of assets upon the dissolution of a nonprofit corporation to any member, trustee, or officer.[13] Assets which are not distributed according to the nonprofit corporation's articles of incorporation or some other provision of law escheat to the state.[14]

[13] *Id.*
[14] *Id.*, § 450.119a (Supp. 1980).

MINNESOTA

I. Legal Basis

Corporations may be formed for educational purposes[1] under the Nonprofit Corporations Chapter of the Minnesota Statutes.[2] Merger, consolidation and dissolution[3] are governed by this chapter if the private college concerned is nonprofit.[4] Minnesota courts are directed both by statute and by common law decisions to apply the cy pres doctrine when necessary.[5]

II. Approval of Dissolution

A merger or consolidation agreement takes effect when the Secretary of State issues a certificate of merger or consolidation.[6] A voluntary dissolution takes effect when the court order dissolving the cooperation is filed with the Secretary of State.[7] A private college may be dissolved involuntarily and its assets liquidated by an order of the District Court in an action filed by the State Attorney General alleging statutorily specified acts or omissions[8] involving fraud, abuse of authority and misrepresentation.

III. Recipients of Assets

The relevant provision[9] of the Minnesota Nonprofit Corporation Act closely follows the Model Nonprofit Corporation Act.[10] One significant addition to the Model Act by the Minnesota statute is the requirement that any assets remaining after distribution according to the college's bylaws be transferred to an organization engaged in activities which will, as nearly as possible, accomplish the general purpose of the dissolving college.[11]

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[1]Minnesota Statutes Annotated § 317.05.

[2]*Id.* 2, § 317.01 *et seq.* (1968, Supp. 1979).

[3]*Id.*, §§ 317.30-317.63.

[4]*Id.*, §§ 317.04-317.05.

[5]*Id.*, § 501.12 (Supp. 1979); *see also In Re Munson's Estate,* 238 Minn. 358, 57 N.W. 2d 22 (1953); for a discussion of the cy pres doctrine, *see* Alabama section I, *supra.*

[6]Minn. Stats. Ann., § 317.37.

[7]*Id.*, § 317.60. If no substantial assets are involved, an out of court procedure for voluntary dissolution may be followed, *see* §§ 317.44(2) to 317.45.

[8]*Id.*, § 317.62.

[9]*Id.*, § 317.57.

[10]For a discussion of the Model Act, see Alabama, section III. *supra.*

[11]Minn. Stat. Ann. § 317.57 subd. 1(5).

MISSISSIPPI

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the chapter of the Mississippi Code dealing with nonprofit, nonshare corporations and religious societies.[1] In addition, Mississippi courts have recognized the cy pres doctrine and would undoubtedly apply it if necessary to preserve a charitable trust in the context of the dissolution of a college.[2]

II. Aproval of Dissolution

A two-thirds majority of the governing board of a college may commence the process of dissolution of a college by filing a petition for dissolution with the local chancery court. The court may appoint liquidators to effectuate the dissolution, but retains the responsibility of supervising the entire process of dissolution and must approve the distribution of assets before entering a decree dissolving the corporation. A certified copy of this decree is to be filed in the office of the Secretary of State.[3]

III. Recipients of Assets

The Mississippi statute requires that the liquidators must satisfy the lawful debts of the corporation before distributing the assets. The Code does not further specify the sort of parties who may or may not receive the assets of the college, except that it provides that any residual assets "shall revert to and become the property of the members, as cotenants, in proportion to their rights thereto."[4] Mississippi has not adopted the Model Nonprofit Corporation Act.

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[1]Miss. Code Ann., § 79-11-1 *et seq.* (Supp. 1979).

[2]*See* e.g., *Citizens' Nat'l. Bank v. Longshore*, 304 So. 2d 287 (Miss. 1974); for a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[3]Miss. Code Ann., § 79-11-15.

[4]*Id.*; *see* also § 79-11-23.

MISSOURI

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges may be governed either by the chapter of the Missouri Code relating to religious and charitable associations[1] or by the chapter containing the state's General Not For Profit Corporation Law.[2] Each chapter provides for the merger[3] and the dissolution[4] of a college incorporated under that chapter. In addition, Missouri courts will apply the doctrine of cy pres when necessary.[5]

II. Approval of Dissolution

If a college is organized under the chapter relating to charitable educational associations, the procedure for dissolution is as follows: (1) Seventy-five percent of the members of the governing board must vote to dissolve the corporation and file an affidavit to this effect with the Secretary of State;[6] (2) the president or secretary of the college or a majority of its governing board must then submit to a court of general jurisdiction an application for dissolution, setting forth the reasons inducing them to desire dissolution as well as an inventory of all the assets and liabilities of the college;[7] (3) The court then enters an order requiring all persons interested in the college to show cause why the college should not be dissolved, and, when necessary, affords a hearing to those opposing the dissolution;[8] (4) If satisfied that the petition can be granted without prejudice of the public welfare, or the interest of the members of the association or its creditors, the court then enters a decree of dissolution and vests the property of the college in court-appointed receivers;[9] (5) A certified copy of this decree is filed with the Secretary of State.[10] The

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[1]Vernon's Ann. Mo. Stats., chapter 352; *see* § 352.010.

[2]*Id.*, chapter 355; *see* § 355.500 (nothing contained in Missouri's general Not for Profit Corporation Law shall affect the right to organize a corporation under the chapter relating to religious and charitable associations).

[3]*Id.*, §§ 352.140 to 352.170, and 355.195 to 355.220.

[4]*Id.*, §§ 352.180 to 352.230 and 355.225 to 355.250.

[5]*See*, e.g., *Comfort v. Higgins*, 576 S.W. 2d 331 (Mo. 1979), and *Ramsey v. Field*, 237 S.W. 2d 143 (Mo. 1915); for a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[6]Vernon's Ann. Mo. Stats. § 352.180; *see* also § 355.225 (two-thirds vote of governing board to initiate voluntary dissolution).

[7]*Id.*, § 352.190; *see* also § 355.225.

[8]*Id.*, § 352.200; *see McCaniel v. Frisco Emp. Hospital Ass'n.*, 510 S.W. 2d 752 (Mo. App. 1974).

[9]*Id.*, § 352.210.

[10]*Id.*, § 352.220.

procedure for involuntary dissolution of a college by way of a quo warranto or equitable proceeding brought by the Attorney General or the Circuit Attorney is set forth in the statutes.[11]

III. Recipients of Assets

The Missouri statutes explicitly provide for the disposition of property in the event of the dissolution of a college.[12] The general scheme of the plan of distribution is as follows: (1) satisfaction of legal liabilities and obligations, (2) return of assets held upon condition requiring return, (3) transfer of assets held for charitable educational use to a corporation or society engaged in similar activities, (4) with the approval of the Attorney General, distribution of remaining assets to other persons, corporations or societies specified in the articles of incorporation or in the plan of distribution.[12]

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[11] *Id.*, § 352.240; *see* also § 355.255.
[12] *Id.*, § 352.210; *see* also § 355.230, 355.235, and 355.245.
[13] *Id.*, § 355.230; *see* also § 352.210.

MONTANA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Montana Nonprofit Corporation Act.[1] There are no reported decisions in Montana applying the doctrine of cy pres in that jurisdiction.

II. Approval of Dissolution

The provisions in the Montana Code governing voluntary dissolution of a nonprofit institution are adopted from the Model Nonprofit Corporation Act.[2] Dissolution of a private college is initiated by a two-thirds vote of the governing board of the institution.[3] The governing board must also adopt an acceptable plan for the distribution of the college's assets.[4] After all debts, liabilities and obligations of the college are discharged and all property of the college transferred, articles of dissolution are prepared for the consideration of the Secretary of State; if these articles conform to Montana law, the Secretary issues a certificate of dissolution to the institution.[5]

III. Recipients of Assets

Assets of a dissolving college in Montana are to be distributed according to a procedure closely patterned on that of the Model Act.[6]

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[1]Mont. Rev. Code Ann., §§ 35-2-101 *et seq.*
[2]Compare §§ 35-2-701 to 35-2-706 with §§ 45 to 50 of the Model Act.
[3]*Id.*, § 35-2-701.
[4]*Id.*, §§ 35-2-702 and 35-2-703.
[5]*Id.*, §§ 35-2-705 and 35-2-706.
[6]*Id.*, § 35-2-702; see Model Act, § 46.

NEBRASKA

I. Legal Basis

The merger, consolidation and dissolution of a nonprofit college in Nebraska is governed by that state's Nonprofit Corporation Act.[1] In addition, Nebraska courts may rely on the doctrine of cy pres as part of their general equitable powers.[2]

II. Approval of Dissolution

The provisions in the Nebraska Code governing voluntary dissolution of a nonprofit institution are adopted from the Model Nonprofit Corporation Act.[3]

III. Recipients of Assets

Assets of a dissolving college in Nebraska are to be distributed according to a procedure closely patterned on that of the Model Act.[4]

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[1]Neb. Rev. Stats. § § 21-1944 *et seq.*

[2]*See,* e.g., *Rohlff v. Gunman Old People's Home,* 143 Neb. 636, 10 N.W. 2d 686 (1943), and In Re Nilson's Estate, 81 Neb. 809, 116 N.W. 971 (1908). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[3]Neb. Rev. Stats., § § 21-1944 to 21-1949. *See* discussion in Montana, section II, *supra.*

[4]Neb. Rev. Stats., § 21-1945. *See* Model Act, § 46, and discussion in Alabama, section III, *supra.*

NEVADA

I. Legal Basis

The merger, consolidation and dissolution of a nonprofit college in Nevada would be governed by the chapter of that state's code relating to nonprofit and cooperative corporations and associations.[1] There are no reported decisions in Nevada applying the doctrine of cy pres in that jurisdiction.

II. Approval of Dissolution

The sections of the Nevada Code relting to nonprofit corporations for educational, religious, scientific, charitable and eleemosynary activities do not provide for the dissolution of such corporations.[2] The sections of this chapter relating to other kinds of nonprofit corporations, however, include provisions for dissolution,[3] and would presumably be relied upon by a Nevada court faced with the dissolution of a nonprofit college in Nevada. Whether a court would get involved in the approval of dissolution of a college is, however, dubious, for there is a provision in Nevada law granting to nonprofit educational institutions "all the powers of . . . disposal incident to the absolute ownership of property . . . by a private person . . ."[4] and authorizing nonprofit educational institutions to exercise these powers "without the necessity of obtaining any order of court by authorization, approval or confirmation . . . ."[5]

III. Recipients of Assets

A Nevada college seeking to dissolve would not, however, have unfettered discretion over the disposition of its assets, for the general powers of disposal mentioned above are qualified to the extent that it would remain subject to the terms of particular trusts and to the general trust that all its properties and funds shall be held for educational, religious, scientific, charitable or eleemosynary purposes."[6] The Attorney General is authorized by the statute to ascertain the condition of any nonprofit corporation's affairs, and to examine whether a nonprofit corporation may have failed to comply with trusts it has assumed or

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[1]Nev. Rev. Stat. Ann. § § 81.010 *et seq.*

[2]*Id.*, § § 81.290 *et seq.*

[3]Id., § § 81.140 (dissolution of nonprofit cooperative corporations), 81.280 (dissolution of cooperative associations), and 81.520 (dissolution of nonstock, nonprofit cooperative corporations.

[4]*Id.*, § 81.310(3).

[5]*Id.*, § 81.310.

[6]*Id.*, § 81.310(3).

may have departed from the general purposes for which it was formed.[7] Because this general authority is lodged in the Attorney General, it would be the prudent course of action for a dissolving college in Nevada to submit its plan of distribution to the Attorney General for his consultation if not approval.

[7] *Id.*, § 81.340.

NEW HAMPSHIRE

I. Legal Basis

The dissolution of nonprofit colleges is governed by the New Hampshire Voluntary Corporations and Associations Law.[1] This statute, however, does not expressly provide for the merger or consolidation of nonprofit colleges. In addition, New Hampshire courts are empowered both by statute and by common law decisions to apply the cy pres doctrine when necessary.[2]

II. Approval of Dissolution

Voluntary dissolution takes effect after the corporation or one-fourth of its members petition the superior court for a decree of dissolution[3] and file the granted decree with the Secretary of State.[4] A nonprofit college may be dissolved without judicial action if the governing board files with the Secretary of State a statement that all the members of the governing board voted for dissolution.[5] The statute does not expressly provide for the involuntary dissolution of a nonprofit college.

III. Recipients of Assets

New Hampshire law does not expressly provide for the distribution of assets when dissolution is granted by court decree. However, when dissolution is by unanimous vote, the corporation must submit to the Secretary of State a plan for the distribution of its assets and satisfaction of its obligations.[6] New Hampshire law also states that nonprofit corporations organized by a special act of the legislature may provide by majority vote for the distribution of its assets upon dissolution unless limited by the special act or the bylaws of the corporation.[7]

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[1]N.H. REV. STAT. ANN. § 292.1 *et seq.* (1977, Supp. 1979).

[2]*Id.*, § 498.4c (Supp. 1979). Attorney General v. Rochester Trust Company, 115 N.W. 74, 333 A. 2d 2d 718 (1975).

[3]*Id.*, § 292.9.

[4]*Id.*, § 292.10.

[5]*Id.*, § 292.10-a (Supp. 1979).

[6]*Id.*, § 292.10-a (Supp. 1979).

[7]*Id.*, § 292.8-1.

NEW JERSEY

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges in New Jersey are governed by that state's Corporations and Associations Not for Profit Law.[1] The New Jersey courts are empowered to apply the cy pres doctrine when necessary.[2]

II. Approval of Dissolution

The merger or consolidation of a nonprofit college takes effect when the corporation files with the Secretary of State a certificate of merger or consolidation approved by a majority vote of its members.[3] Dissolution proceedings are initiated by filing a dissolution consent that, after proper public notice, has been approved by a two-thirds vote of the board of trustees.[4] The law provides an alternative dissolution process whereby a board of trustees in the name of the corporation may bring the civil action in Superior Court to apply for a dissolution and for the appointment of a receiver.[5] There is no express provision for the involuntary dissolution of a nonprofit college.

III. Recipients of Assets

In a court supervised dissolution, either the Superior Court[6] or the receiver may distribute the corporate assets among those entitled to the assets after the payment of debts.[7] Otherwise, after the payment of lawful debts, the governing board must distribute the college's assets according to its bylaws. The corporation, however, may not divert property given in trust for a charitable purpose from the ends for which it was given.[8]

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[1]N.J. STAT. ANN., § 15.1-1 *et seq.* (1939, Supp. 1980).

[2]*Howard Savings Institution of Newark, New Jersey v. Peep,* 34 N.J. 494, 170 A.2d 39 (1961).

[3]N.J. STAT. ANN., § 15-1-17.

[4]*Id.*, § 15.14-4.

[5]*Id.*, § 15-14-1. (Supp. 1980).

[6]*Id.*, § 15-14.3 (Supp. 1980).

[7]*Id.*, § 15-14.5 (Supp. 1980).

[8]*Id.*, § 15.1-20.

NEW MEXICO

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the New Mexico Nonprofit Corporation Act.[1] There is no reported decision requiring New Mexico courts to apply the cy pres doctrine, but in dictum the Supreme Court of that state has indicated it does not "run conter to the public policy in New Mexico" to recognize the applicability of the cy pres doctrine by courts in Texas.[2]

II. Approval of Dissolution

Articles of merger,[3] consolidation,[4] or voluntary dissolution[5] adopted by the governing board of a nonprofit college[6] must be filed with the state's Corporation Commission. The articles take effect when the Commission issues a certificate of merger, consolidation[7] or dissolution.[8] The Commission may revoke a certificate of incorporation when there is fraud, abuse of authority, failure to file timely annual reports, misrepresentation or failure to pay fees and penalties after due notice.[9] The District Courts also have jurisdiction to dissolve a nonprofit college involuntarily in an action properly brought by a member of the corporation or by a creditor.[10]

III. Recipients of Assets

The New Mexico Nonprofit Corporation Act provides that assets of a dissolving nonprofit college shall be distributed according to a procedure identical with the Model Nonprofit Corporation Act.[11]

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[1]N.M. STAT. ANN., § 53.8.1 *et seq.* (Supp. 1979).
[2]*Farmers and Merchants Bank v. Waolf,* 86 N.M. 320, 523 P. 2d 1346, 1350 (1974).
[3]N.M. STAT. ANN., §§ 53.8.40 and 53.8.43.
[4]*Id.*, §§53.8.41 and 53.8.43.
[5]*Id.*, § 53.8.51.
[6]*Id.*, §§ 53.8.42 (merger or consolidation), 53.8.47 (dissolution).
[7]*Id.*, § 53.8.44.
[8]*Id.*, § 53.8.52.
[9]*Id.*, §§ 53.8.53 and 53.8.54.
[10]*Id.*, §§ 53.8.55 and 53.8.54.
[11]*Id.*, § 53.8.48 and 53.8.49; see Model Act, § 46; for a discussion of the Model Act, *see* Alabama, section III, *supra.*

NEW YORK

I. Legal Basis

Institutions of higher education in New York are typically chartered by the Board of Regents, although a college may, with the consent of the Commissioner of Education, be formed under the Business Corporation Law or the Not-for-Profit Corporation Law.[1] In addition, some colleges have been created by a special act of state legislature.[2] The merger, consolidation and dissolution of nonprofit colleges are governed by the state's Not-for-Profit Corporation Law.[3] In addition, the legislature and the state courts have recognized the doctrine of cy pres in New York.[4]

II. Approval of Dissolution

A majority of the members of the governing board of a nonprofit college may petition for judicial dissolution if they are persuaded that the assets of the corporation are not sufficient to discharge its liabilities or that dissolution will be beneficial to the members.[5]

A nonprofit college may be dissolved in New York either judicially or nonjudicially. In the case of nonjudicial dissolution, the governing board adopts a plan for the dissolution of the corporation and for the distribution of its assets.[5] Any college chartered by the Board of Regents must seek the approval of the Regents for its dissolution.[6] If at the time of dissolution a nonprofit college holds assets required to be used for a particular purpose, it must seek approval for its plan of dissolution and distribution from a local Justice of the Supreme Court.[7] When the approval of the Regents and the Supreme Court has been obtained, a certificate of dissolution is delivered to the Department of State.[8] When the consent of the State Tax Commission is attached to the certificate, the State Department files the certificate and the college is dissolved.[9] Then the board is empowered only to wind up the affairs of the college by collecting and liquidating its assets, discharging its liabilities, and

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[1]N.Y. Educ. Law, § 216 (McKinney, Supp. 1979).

[2]*Id.*, § 4301.

[3]*Id.*, § 216-a; N.Y. Not-for-Profit Corp. Law § § 1101 *et seq.* (McKinney Supp. 1979).

[4]N.Y. Estates, and Trusts Law, § 8-1.1 (McKinney 1970); and *see* e.g., *In Re Randall's Estate*, 71 Misc. 2d 1063, 338 N.Y.S. 2d 269 (1972), and *In Re Goehringer's Will*, 69 Misc. 2d 145, 329 N.Y.S. 2d 516 (1972).

[5]N.Y. Not-for-Profit Corp. Law, § 1001 (McKinney Supp. 1979).

[6]*Id.*, § 1002(c).

[7]*Id.*, § 1002(d) (Supp. 1979).

[8]*Id.*, § 1003; for § 1003(a)(8), *see* Supp. 1979.

[9]*Id.*, § 1004.

distributing its remaining assets according to the approved plan.[10] Although this detailed procedure is entitled "non-judicial dissolution," the Attorney General, or any single member of the governing board, or, indeed, any creditor or claimant of a college seeking to dissolve may, with the approval of the Supreme Court, suspend or annul the dissolution or continue the liquidation process under the supervision of the court.[11] The procedures for judicial dissolution of a college are similarly detailed in New York law,[12] and may be initiated by the Attorney General in case of alleged fraud either in procurement of the charter or in the conduct of the college's business,[13] by a majority of the governing board where they determine that the assets of the corporation are insufficent to discharge its liabilities or that dissolution will be beneficial,[14] or by any member of the governing board alleging that the board is deadlocked in management of the college's affairs, or so divided that dissolution would be beneficial, or that board members or college administrators have wasted the college's assets or have otherwise acted in an illegal, oppressive or fraudulent manner, or that the college is no longer able to carry out the purposes for which it was incorporated.[15] The Attorney General must be a party to any proceeding for judicial dissolution of a nonprofit college.[16]

III. Recipients of Assets

In the case of nonjudicial dissolution the procedure for distribution of assets is closely patterned on the Model Nonprofit Corporation Act.[12] In the case of judicial dissolution, the court may either distribute the college's assets or appoint a receiver to do so.[18] After six months from the date fixed for the payment of the final distribution of assets, any assets distributable to a creditor who is unknown or cannot be found are paid to the State Comptroller as abandoned property.[19]

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[10] *Id.*, § 1005.
[11] *Id.*, § 1008.
[12] *Id.*, §§ 1103 to 1114.
[13] *Id.*, § 1101(a).

NORTH CAROLINA

I. Legal Basis

Corporations may be formed for educational purposes[1] under the Nonprofit Corporation Act of the North Carolina Statutes.[2] Merger, consolidation and dissolution are governed by this chapter if the private college concerned is nonprofit.[3] In addition, both by statute and by common law, North Carolina courts are directed to apply the cy pres doctrine when necessary.[4]

II. Approval of Dissolution

The articles of merger, consolidation or voluntary dissolution take effect when the Secretary of State endorses the articles of merger or consolidation[5] or issues a certificate of dissolution.[6] A private college may be dissolved involuntarily and its assets liquidated by a decree of the superior court in an action brought by the Attorney General alleging (1) fraud in procuring its charter; (2) abuse of authority; (3) failure to name or change its registered agent; or (4) refusal to comply with a court order to produce its records.[7] The Superior Court also has jurisdiction to liquidate a college's assets in an action properly brought by a member or director of the corporation, or by a creditor.[8]

III. Recipients of Assets upon Dissolution

The relevant provisions of the North Carolina statute closely follow the Model Nonprofit Corporation Act,[9] except that the North Carolina Nonprofit Corporation Act requires assets distributable to an unknown or unfound creditor or member be paid to the University of North Carolina until claimed unless special limitations on the assets require disposition to an organization engaged in activities substantially similar to those of the dissolving college.[10]

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[1]N.C. Gen. Stats.

[2]*Id.*, § 55A-1 *et seq.* (1975, Supp. 1979).

[3]*Id.*, §§ 55A-38 to 55A-57.

[4]*Id.*, § 36A-53 (Supp. 1979); and *see*, e.g. *Wilson v. First Presbyterian Church*, 284 N.C. 284, 200 S.E. 2d 769 (1973); for a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[5]N.C. Gen. Stats., §§ 55A-41(c), 55A-41(b).

[6]*Id.*, § 55A-49.

[7]*Id.*, §§ 55A-50, 55A-53(e).

[8]*Id.*, § 55A-53.

[9]*Id.*, §§ 55A-45, 55A-57; *see* Model Act, § 46; for a discussion of the Model Act, *see* Alabama, section III, *supra*.

[10]N.C. Gen. Stat., §§ 55A-57

NORTH DAKOTA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the North Dakota Nonprofit Corporation Act.[1] There are no reported cases in North Dakota on the cy pres doctrine.

II. Approval of Dissolution

Articles of merger,[2] consolidation,[3] or voluntary dissolution[4] adopted by the governing board of nonprofit college[5] must be filed with the Secretary of State and take effect when the Secretary of State issues a certificate of merger, consolidation[6] or dissolution.[7] The district court has jurisdiction to dissolve a nonprofit college involuntarily in an action properly brought by the Attorney General alleging fraud, abuse of authority, failure to appoint a registered agent or to notify the Secretary of State of a change of a registered agent in the state.[8]

III. Recipient of Assets

Courts of equity also have jurisdiction to liquidate the assets of a corporation in an action properly brought by a member of the governing board of a nonprofit college, by a creditor, or by the Attorney General.[9] In both voluntary dissolutions and court supervised dissolutions, the North Dakota Nonprofit Corporation Act provides that assets of a nonprofit college shall be distributed according to a procedure following that of the Model Nonprofit Corporation Act.[10]

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[1]N.D. CENT. CODE, § 10-24-01 *et seq*. (Supp. 1979).
[2]*Id.*, § § 10-25-01 and 10-25-04.
[3]*Id.*, § § 10-25-02 and 10-25-04.
[4]*Id.*, § 10-26-05.
[5]*Id.*, § § 10-25-03 (merger or consolidation) and 10-26-01 (dissolution).
[6]*Id.*, § § 10-25-04 and 10-25-05.
[7]*Id.*, § 10-26-06.
[8]*Id.*, § § 10-26-07 and 10-26-08.
[9]*Id.*, § 10-26-10.
[10]*Id.*, § § 10-26-02 and 10-26-10; see Model Act § 46; for a discussion of the Model Act, *see* Alabama, section III, *supra*.

OHIO

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Ohio Nonprofit Corporation Law.[1] In addition, Ohio courts are empowerd to apply the cy pres doctrine when necessary.[2]

II. Approval of Dissolution

The process of voluntary dissolution of a nonprofit college is initiated when the members of the governing board adopt a majority vote a resolution of dissolution and file a certificate of dissolution when the Secretary of State.[3] A county court of common pleas, however, may have jurisdiction to oversee the dissolution process if petitioned either by the corporation, a majority of the trustees, or a creditor.[4] A corporation may be involuntarily dissolved judicially either in an action properly brought by the state in the supreme court or a court of appeals, or in an action properly brought by members of or trustees of the corporation in a county court of common pleas.[5]

III. Recipients of Assets

The Ohio Nonprofit Corporation Law provides that assets of a dissolving nonprofit college shall be distributed according to a procedure closely following that of the Model Nonprofit Corporation Act.[6]

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[1]OHIO REV. CODE ANN. § 1702.01 *et seq*. (1978, Supp. 1980) (Anderson); *see* also chapter 1713 of the Ohio Code, relating to Eductional Corporations. In particular, § 1713.24 provides for the voluntary dissolution of colleges and universities in which shares or stocks are subscribed or taken.

[2]*Rice v. Stanley,* 42 Ohio St. 2d 209, 327 N.E. 2d 774 (1975). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[3]OHIO REV. CODE ANN., § 1702.47.

[4]*Id.*, § 1702.50.

[5]*Id.*, § 1702.52.

[6]*Id.*, § 1702.49. *See* Model Act, § 46, and discussion of the Model Act, in Alabama, section III, *supra.*

OKLAHOMA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed principally by the Oklahoma Business Corporation Act,[1] although attention should be paid to some provisions in the Nonprofit Corporations Act.[2] In addition, Oklahoma courts are empowered both by statute and by common law decisions to apply the cy pres doctrine when necessary.[3]

II. Approval of Dissolution

Voluntary dissolution of a nonprofit college may be conducted out of court or subject to court supervision.[4] The dissolution process is initiated when the members of the governing board adopt by unanimous consent a statement of intent to dissolve the corporation and file it with the Secretary of State.[5] The dissolution takes effect when the Secretary of State issues a certificate of dissolution or a district court enters an order of dissolution.[6] The district court also has jurisdiction to dissolve a nonprofit college involuntarily[7] in an action properly brought by a member of the corporation or a creditor.[8]

III. Recipients of Assets

After the payment of all liabilities, the governing board must dispose of the assets to similarly exempted corporations having the same purposes as the dissolving corporation; if the governing board fails to do so, the district court supervising the dissolution process must attend to this matter.[9]

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[1]OKLA. STAT. ANN., tit. 18 § 1.3.

[2]*Id.*, tit. 60, § 602. *See also Estate of Campbell v. Lepley,* 532 P. 2d 1374 (OK. 1975). relating to Educational Corporations.

[3]*Id.*, tit. 60, § 602. *See also* Estate of Campbell v. Lepley, 532 P.2d 1374 (OK. 1975).

[4]OKLA. STAT. ANN., tit. 18 § 1.177.

[5]*Id.*, tit. 18 § 1.181.

[6]*Id.*, tit. 16 § 1.177.

[7]*Id.*, tit. 18 § 1.195.

[8]*Id.*, tit. 18 § 1.196.

[9]*Id.*, tit. 18 § 864 (Supp. 1979).

OREGON

I. Legal Basis

A nonprofit college in Oregon has the power the cease its activities and dissolve.[1] The dissolution process, both voluntary and involuntarily, follows, with minor differences, the procedures set forth in the Model Non Profit Corporation Act.[2] The doctrine of cy pres has been recognized by the state courts where necessary to effect the donor's intent.[3]

II. Approval of Dissolution

As was stated above, Oregon has adopted the Model Act. One slight variation from the Model Act in the Oregon statute is the requirement that articles of dissolution be filed with the State Corporation Commissioner. The commissioner then issues a certificate of dissolution, at which time the corporate existence ceases.[4] Involuntary dissolution procedures can be brought by the Attorney General in circuit court if a nonprofit college were involved in fraud or had failed to meet the incorporation requirements.[5] Claims to liquidate the corporation may also be brought in circuit court by the governing board of a nonprofit college.[6]

III. Recipients of Assets

The Oregon scheme for distribution of a dissolving college's assets corresponds to the sequence in the Model Act.[7] This scheme for distribution of assets also applies to judicially supervised liquidation of a nonprofit college.[8] Any residual assets distributable to a person who is unknown or who cannot be fund must be liquidated, and the cash must be deposited with the Division of State Lands.[9]

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[1]Ore. Rev. Stat. § § 61.051, 61,061 (14) (1979).

[2]Compare Rev. Stat. § § 61.525 to 61.600 with § § 45 to 51 of the Model Act. For a discussion of the Model Act, *see* Alabama, Section III, *supra.*

[3]*See,* e.g., *Matter of King's Estate,* 39 Ore. App. 239, 592 p. 2d 231 (1979); for a discussion of the cy pres doctrine, *see* Alabama, Section I, *supra.*

[4]Ore. Rev. Stat. § 61.550 (1979).

[5]Ore. Rev. Stat. § § 61.556, 57.585 (1979).

[6]Ore. Rev. Stat. § 61.565 (1979).

[7]Ore. Rev. Stat. § § 61.530 to 535 (1979); *see* Model Act, § 46, and see discussion of the Model Act in Alabama, Section III, *supra.*

[8]Ore. Rev. Stat. § 61.570 (1979).

[9]Ore. Rev. Stat. § § 61.595, 57.625 (1979).

PENNSYLVANIA

I. Legal Basis

The merger and consolidation[1] and the dissolution[2] of colleges incorporated in Pennsylvania as nonprofit institutions[3] are governed by that state's Nonprofit Corporation Law of 1972. In addition, Pennsylvania courts will apply the doctrine of cy pres when necessary.[4]

II. Approval of Dissolution

The Wilson College case referred to in the introduction to this report serves as a timely reminder that higher education administrators and trustees should not assume that a decision to dissolve a college will always be approved. Under Pennsylvania law, a majority[5] of the members of the governing board of a college may initiate the process of dissolution by adopting a resolution recommending that the corporation be dissolved voluntarily.[6] Then the board prepares articles of election to dissolve, which are filed in the Department of State.[7] It may petition the court to supervise the entire process of dissolution,[8] but it must involve the court only (1) in the disposition of property given for charitable purposes,[9] or (2) if the college is organized as a corporation with "religious assets."[10] When all liabilities of the college have been discharged and all residual assets distributed, the board prepares articles of dissolution, which are filed with the Department of State.[11] In addition, Pennsylvania law provides for involuntary dissolution of nonprofit corporations.[12]

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[1]Pa. Stats. Ann., tit. 15 § § 7921 *et seq.* (Supp. 1980).
[2]*Id.*, § § 7961 et seq. (Supp. 1980).
[3]*Id.*, § § 7211 and 7311 (Supp. 1980).
[4]*See*, e.g., *In Re Kay's Estate,* 456 Pa. 43, 317 A.2d 193 (1974); and *see In Re Christ Evangelical Lutheran Church of Monessen,* 49 West. 273 (Westmoreland Co. C.C.P. 1967). For a discussion of the cy pres doctrine, *see* Alabama section I, *supra.*
[5]Pa. Stats. Ann., tit. 15 § 7964(a) (Supp. 1980).
[6]*Id.*, § 7962(1) (Supp. 1980).
[7]*Id.*, § 7965 (Supp. 1980).
[8]*Id.*, § 7968(a) (Supp. 1980).
[9]*Id.*, § 7968(b) (Supp. 1980).
[10]*Id.*, § 7968(c) (Supp. 1980).
[11]*Id.*, 7969 (Supp. 1980).
[12]*Id.*, § § 7981 *et seq.* (Supp. 1980).

III. Recipients of Assets

The governing board is given broad authority by the Pennsylvania statute to wind up and settle the affairs of a nonprofit corporation.[13] As was intimated above, however, it may not divert any property given for charitable purposes from the objects to which the property was given unless it obtains from the appropriate court an order specifying the disposition of the property.[14]

[13] *Id.*, § 7967 (Supp. 1980).
[14] *Id.*, § 7549(b) (Supp. 1980).

RHODE ISLAND

I. Legal Basis

Rhode Island has not adopted the Model Nonprofit Corporation Act. The merger and consolidation of nonprofit colleges are governed by that state's Nonbusiness Corporation Act,[1] and the dissolution[2] of nonprofit colleges is governed by the Business Corporation Act.[3] In addition, the state courts will apply the doctrine of cy pres where necessary.[4]

II. Approval of Dissolution

The process of voluntary dissolution is indicated when the governing board files with the Secretary of State a statement of intent to dissolve. If the Secretary of State finds that the statement conforms to Rhode Island law and that all fees and franchise taxes have been paid, he endorses and officially files the statement.[5] Within thirty days after this filing, the college must cease to carry on its business except to wind up its affairs. The corporate existence of the college continues until the Secretary of State or a court issues a certificate of dissolution.[6] The governing board may petition a court of competent jurisdiction to supervise the liquidation of the college's assets.[7] After all debts of the college have been paid or provided for, all obligations discharged, and all property distributed, the president or a vice president of the corporation and the secretary must deliver articles of dissolution to the Secretary of State, who files the articles and issues a certificate of dissolution.[8] Rhode Island law likewise provides for involuntary dissolution of nonprofit corportions.[9]

III. Recipients of Assets

According to the Business Corporation Act, after filing a statement of intent to dissolve, the governing board must collect all the college's assets, sell its properties, and pay or provide for its obligations, and then distribute the remainder of its assets "among its shareholders according to their respective

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[1]R.I. Gen. Laws Ann., § 7-6-18.
[2]*Id.*, § 7-6-13.
[3]*Id.*, § § 7-1.1-1 *et seq.* (1956 and Supp. 1980).
[4]*See*, e.g., Indust. Nat. Bank of R.I. v. Gloucester Manton Free Public Library, 107 R.I. 161, 265 A.2d 724 (1970). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*
[5]R.I. Gen. laws Ann. § § 7-1.1-77 and 7-1.1-78.
[6]*Id.*, § 7-1.1-79.
[7]*Id.*, § 7-1.1-80.
[8]*Id.*, § § 7-1.1-85 and 7-1.1-86.
[9]*Id.*, § 7-1.1-87 *et seq.*

rights and interests."[10] Since the last element of this distribution scheme does not fit the context of the typical non-profit college, a judge supervising the liquidation of its business[11] would probably rely on the cy pres doctrine to preserve the charitable purposes of gifts that a dissolving college may have received. The court may appoint a receiver in the liquidation process,[12] and if there are any residual assets distributable to a creditor who is unknown or who cannot be found, they must be reduced to cash and deposited with the State Treasury to be paid to that person or his legal representative upon satisfactory proof of his right to the assets.[13]

[10] *Id.*, § 7-1.1-80(b).
[11] *Id.*, § 7-1.1-80(c)
[12] *Id.*, § 7-1.1-97.1.
[13] *Id.*, § 7-1.1-97; *see* Model Act, § 61.

SOUTH CAROLINA

I. Legal Basis

South Carolina has not adopted the Model Nonprofit Corporation Code. In the chapter of the South Carolina Code relating to nonprofit corporations[1] there is no express provision governing the merger and consolidation of these kinds of institutions. The Code does provide for the voluntary dissolution of a nonprofit college.[2] In addition, the South Carolina courts will apply the doctrine of cy pres when necessary.[3]

II. Approval of Dissolution

By a vote of two-thirds of the members of the governing board, a college may initiate the process of dissolution by notifying the Secretary of State of this decision.[4] There is no express provision in South Carolina law requiring the approval of the Secretary of State or of a state court of the dissolution process.

III. Recipients of Assets

There is no statutory provision concerning the distribution of assets of a nonprofit corporation in South Carolina. Unless otherwise bound by its charter or bylaws, a college seeking to dissolve might devise a plan of distribution of assets free from any governmental supervision or control. As was stated above, however, South Carolina courts recognize the doctrine of cy pres. A dissolving South Carolina college, therefore, should make a genuine attempt to preserve the general charitable purpose of property it may have been given in trust.

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[1]S.C. Code Ann., § § 33-31-10 *et seq.*

[2]*Id.*, § 33-31-150.

[3]*See*, e.g., *Furman Univ. v. McLeod*, 238 S.C. 475, 120 S.E. 2d 865 (1965). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[4]S.C. Code Ann., § 33-31-150.

SOUTH DAKOTA

I. Legal Basis

The reorganization of nonprofit colleges in South Dakota by way of merger or consolidation[1] and the dissolution[2] of these institutions are governed by that state's Nonprofit Corporation Act, which is closely patterned on the Model Nonprofit Corporation Act. There are no reported decisions in South Dakota applying the doctrine of cy pres in that jurisdiction.

II. Approval of Dissolution

The procedures for voluntary dissolution and involuntary dissolution are closely patterned on the provisions in the Model Act.[3]

III. Recipients of Assets

Assets of a dissolving college in South Dakota are to be distributed according to a procedure closely patterned on the Model Act.[4] If there are any assets distributable to a person who is unknown or who cannot be found, they must be reduced to cash and deposited with the State Treasury, to be paid to that person or his legal representative upon satisfactory proof of his right to the assets.[5]

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[1]S.D. Code, §§ 47-25-1 *et seq.* (1967 and Supp. 1980).

[2]*Id.*, §§ 47-26-1 *et seq.*

[3]Compare S.D. Code §§ 47-26-1 *et seq.* with §§ 45 to 50 of the Model Act. See discussion in Montana, section II, *supra.*

[4]Compare S.D. Code, §§ 47-26-5 and 47-26-6 with 46 of the Model Act; and *see* discussion in Alabama, section III, *supra.*

[5]S.D. Code, § 47-26-38; see Model Act, § 61.

TENNESSEE

I. Legal Basis

Title 48 of the Tennessee Code governs corporations and associations in that state. Although there are provisions in that title relating to nonprofit corporations,[1] nothing in these provisions concerns the merger, consolidation or dissolution of a nonprofit corporation, which is governed by the relevant provisions found in the General Corporation Act.[2] Although the doctrine of cy pres has not formally been adopted by state courts in Tennessee, these courts have the power to interpret the substance of the donor's intent broadly rather than to adhere strictly to the form of the grant.[3]

II. Approval of Dissolution

The statute governing voluntary dissolution is written with the structure of a for-profit corporation in mind. It might intelligently be construed to mean that a majority of the governing board of a nonprofit college may initiate the process of dissolution by filing a statement of intent to dissolve with the Secretary of State.[4] Thereafter the college must cease to do business except to wind up its affairs; the corporate existence of the college continues until the Secretary of State has issued a certificate of dissolution or until a court of competent jurisdiction has entered an order of dissolution.[5] The Tennessee Code likewise provides for involuntary dissolution of a nonprofit college;[6] in the event of a suit for involuntary dissolution, the district attorney general is to be made a party defendant.[7]

III. Recipients of Assets

The assets of a nonprofit college in Tennessee are to be distributed according to a procedure closely patterned on the distribution scheme found in the Model Nonprofit Corporation Act,[8] except that in the case of a judicially supervised liquidation where the governing board fails to adopt a plan of

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[1]Tenn. Code Ann. § § 48-601 *et seq.* (1979).

[2]*Id.*, § § 48-901 *et seq.* (merger and consolidation) and § § 48-1001 *et seq.* (dissolution

[3]*See, e.g., Hardin v. Order of Old Fellows of Tenn.*, 51 Tenn. App. 586, 370 S.W. 2d 844 (1963). For a discussion of the cy pres doctrine *see* Alabama, section I, *supra.*

[4]Tenn. Code Ann., § 48-1002.

[5]*Id.*, § 48-1003.

[6]*Id.*, § 48-1008.

[7]*Id.*, § 48-1015.

[8]*Id.*, § 48-1004(c); *see* Model Act, § 46, and discussion in Alabama, section III, *supra.*

distribution of the college's residual assets, these assets may be conveyed by the court to the State of Tennessee or its counties or municipalities for purposes similar to those of the dissolved corporation.[9] Tennessee has repealed the provision from the Model Act requiring the deposit of undistributable assets with the State Treasurer,[10] replacing it with a provision that such assets escheat to the state as unclaimed property.[11]

[9]*Id.*, § 48-1009.
[10]Acts 1968, ch. 523, § 1 (repealed 1978), *see* Model Act, § 61.
[11]Tenn. Code Ann. § 64-2901.

TEXAS

I. Legal Basis

The merger or consolidation[1] and dissolution[2] of nonprofit colleges in Texas are governed by that state's Nonprofit Corporation Act, which is closely patterned on the Model Nonprofit Corporation Act.[3] In addition, Texas courts will apply the doctrine of cy pres when necessary.[4]

II. Approval of Dissolution

The procedure for voluntary dissolution of a nonprofit college in Texas is patterned on the provisions in the Model Act. After observing these requirements, the governing board of the college authorizes articles of dissolution to be delivered to the Secretary of State, who officially files the articles and issues a certificate of dissolution.[5] The Attorney General may initiate the process of involuntary dissolution in a district court if a college has failed to comply with a condition precedent to its incorporation or had continued to transact business beyond the scope of the purposes of the college expressed in its charter, or had made a misrepresentation of a material matter in any document submitted to the state pursuant to the Nonprofit Corporation Act.[6] Under some circumstances the Secretary of State may order the involuntary dissolution of a nonprofit college.[7]

III. Recipients of Assets

The assets of a dissolving college in Texas are to be distributed to a plan closely patterned on the provisions of the Model Act.[8] The portion of assets that are distributable to a creditor of other person who is unknown or who cannot be found after the exercise of reasonable diligence are to be reduced to cash and deposited with the State Treasurer, who holds the funds for seven years for payment to the person(s) entitled to them. If after seven years no claim is made for such funds, after proper public notice the funds escheat to the General Revenue Fund of the State of Texas.[9]

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[1]Vernon's Ann. Civ. Stat., art. 1396-5.01 *et seq.* (1980).

[2]*Id.*, 1396-6.01 *et seq.*

[3]Compare a 1396-6.01 *et seq* with § § 45-51 of the Model Act. For a discussion of the Model Act, *see* Alabama, section I, *supra.*

[4]*See,* e.g., *Stahl v. Shriners' Hosp. for Crippled Children,* 581 S.W. 2d 227 (Tex. Civ. App. 1979). For a discussion of the doctrine of cy pres *see* Alabama, section I, *supra.*

[5]Vernon's Ann. Civ. Stat., art. 1396-6.06.

[6]*Id.*, 7.01(A).

[7]*Id.*, 7.01(B) and (C).

[8]*Id.*, § § 6.02 and 6.03; *see* Model Act, § 46.

[9]*Id.*, § 7.11; *see* Model Act. § 61.

UTAH

I. Legal Basis

The merger or consolidation[1] and the dissolution[2] of nonprofit colleges in Utah are governed by that state's Nonprofit Corporation Code, which is closely patterned on the Model Nonprofit Corporation Act. In addition, Utah courts are empowered to apply the doctrine of cy pres when necessary.[3]

II. Approval of Dissolution

The process of voluntary dissolution is closely patterned on the provisions for dissolution in the Model Act. After following these requirements, the governing board presents articles of dissolution to the Secretary of State, who files the articles and issues a certificate of dissolution.[4] The Attorney General may institute involuntary dissolution proceedings in the district court of Salt Lake County if a nonprofit college were to exceed or abuse its authority or solicit money fraudulently.[5] In addition, courts of equity are empowered to terminate the business of a nonprofit college and to liquidate its assets in an action properly brought by a member of the governing board of by a creditor.[6]

III. Recipients of Assets

The assets of a dissolving college in Utah are to be distributed according to a plan closely patterned on the Model Act.[7] Portions of assets distributable to a person who is unknown or who cannot be found are to be deposited with the State Treasurer,[8] who disposes of them in accordance with the Uniform Disposition of Unclaimed Property Act.[9]

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[1]Utah Code Ann., §§ 16-6-54 to 16-6-61 (1973).

[2]*Id.*, §§ 16-6-62 to 16-6-78.

[3]*See*, e.g., Gardner v. Davis County, 523 P.2d 865 (Utah 1974). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[4]Utah Code Ann., §§ 16-6-62, 16-6-66, and 16-6-67; *see* Model Act, §§ 45, 49 and 50.

[5]Utah Code Ann., § 16-6-68; *see* Model Act, § 51.

[6]Utah Code Ann., § 16-6-69; and *see* Model Act, § 54.

[7]Utah Code Ann., §§ 16-6-63 and 16-6-64; *see* Model Act, §§ 46 and 47.

[8]Utah Code Ann., § 16-6-76; *see* Model Act, § 16.

[9]Utah Code Ann., §§ 78-44-1 *et seq.*

VERMONT

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Vermont Nonprofit Corporations Act.[1] In addition, Vermont courts are empowered to apply the cy pres doctrine when necessary.[2]

II. Approval of Dissolution

The voluntary dissolution of a nonprofit college takes effect after the governing board adopts by majority vote a resolution to dissolve[3] and the Secretary of State issues a certification of dissolution.[4] A nonprofit college may be dissolved involuntarily by a decree of the county court in an action properly brought by the Attorney General alleging fraud, abuse of authority or failure to name a registered agent.[5] The county court has jurisdiction to liquidate a college's assets in an action properly brought by a member of the corporation or by a creditor.[6]

III. Recipients of Assets

The Vermont Nonprofit Corporations Act provides that assets of a dissolving nonprofit college shall be distributed according to a procedure following that of the Model Nonprofit Corporation Act.[7]

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[1]VT. STAT. ANN., tit. 11 § 2301 *et seq.* (1973, Supp. 1980).
[2]Ball v. Hall, 129 VT. 200, 274 A.2d 516 (1971).
[3]VT. STAT. ANN., § 2601.
[4]*Id.*, § 2606.
[5]*Id.*, § § 2607 and 2608.
[6]*Id.*, § 2610.
[7]*Id.*, § 2602. For a discussion of the Model Act, *see* Alabama section III, *supra*.

VIRGINIA

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Virginia Nonstock Corporation Act which is closely patterned on the Model Nonprofit Corporation Act.[1] In addition, the Virginia courts are empowered to apply the cy pres doctrine when necessary.[2]

II. Approval of Dissolution

The procedure for the voluntary dissolution of nonprofit colleges in Virginia is patterned on the provisions of the Model Act. After observing these provisions, the governing board of the college authorizes articles of dissolution to be delivered to the State Corporation Commission which officially files the articles and issues a certificate of dissolution.[3] Nonprofit colleges may also be automatically dissolved if they fail to file annual reports as prescribed by law for two successive years.[4] The State Corporation Commission may involuntarily dissolve a nonprofit corporation for abuse of authority or failure to maintain a registered agent in the state.[5] The circuit courts also have jurisdiction to liquidate the college's assets in an action properly brought by a member of the corporation of by a creditor.[6]

III. Recipients of Assets

The Virginia Nonstock Corporation Act provides that assets of a dissolving nonprofit college shall be distributed according to a procedure closely following that of the Model Nonprofit Corporation Act.[7]

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[1]Compare Va. Code § 13.1-201 *et seq.* (1978, Supp. 1980) with §§ 45-51 of the Model Act. For a discussion of the Model Act, *see* Alabama, section I, *supra.*

[2]*See*, e.g. *Campbell v. Board of trustees of James Barry Robinson Home for Boys,* 260 S.E. 2d 204 (Va. 1980). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra.*

[3]Va. Code §§ 13.1-248 and 13.1-253.

[4]*Id.*, § 13.1-254 (Supp. 1980).

[5]*Id.*, § 13.1-256.

[6]*Id.*, § 13.1-257.

[7]*Id.*, §§ 13.1-249 and 13.1-250.

WASHINGTON

I. Legal Basis

The merger or consolidation[1] and the dissolution[2] of nonprofit colleges in Washington are governed by that state's Nonprofit Corporation Act, which is closely patterned on the Model Nonprofit Corporation Act.[3] In addition, Washington courts will apply the doctrine of cy pres when necessary.[4]

II. Approval of Dissolution

The procedures for voluntary dissolution are closely patterned on the provisions in the Model Act. After observing these requirements, the governing board of a dissolving college authorizes articles of dissolution to be delivered to the Secretary of State, who officially files the articles and issues a certificate of dissolution.[5] Under some circumstances, the Attorney General may seek an decree of involuntary dissolution from a superior court.[6]

III. Recipients of Assets

The assets of a dissolving college in Washington are to be distributed according to a plan closely patterned on the provisions of the Model Act.[7] The Washington statute does not make express provision for transfer of assets of a dissolving college to the state for distribution to creditors who are unknown or who cannot be found.[8] Under some circumstances the members of the governing board are required to hold title to the property of a dissolving college as trustees for the benefit of its creditors.[9]

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[1]Rev. Code Wash. Ann., § § 24.03.195 et seq. (1969 and Supp. 1980).

[2]*Id.*, § § 24.03.220 et seq.

[3]Compare, e.g., § 24.03.220 (voluntary dissolution) with Model Act, § 45.

[4]*See*, e.g., *Puget Sound Nat. Bank of Tacoma v. Easterday*, 56 Wash. 2d 937, 350 P.2d 444 (1963). For a discussion of the cy pres doctrine, *see* Alabama, section I. *supra*.

[5]Rev. Code Wash. Ann., § § 24.03.220, 240, and 245; *see* Model Act, § § 45, 49 and 50.

[6]Rev. Code Wash. Ann. § 24.03.250 (Supp. 1980); *see* Model Act, § 51.

[7]Rev. Code Wash. Ann., § § 24.03.225 and 230 (Supp. 1980); *see* Model Act, § § 46 and 47.

[8]*See* Model Act, § 61.

[9]Rev. Code Wash. Ann., § 24.03.302 (Supp. 1980).

WEST VIRGINIA

I. Legal Basis

The merger or consolidation[1] and the dissolution[2] of nonprofit colleges in West Virginia are governed by the article of that state's Corporation Code relating to business and nonprofit corporations, the relevant portions of which are closely patterned on the Model Nonprofit Corporation Act.[3] In addition, West Virginia courts are directed both by statute and by common law decisions to apply the doctrine of cy pres when necessary.[4]

II. Approval of Dissolution

The procedure for voluntary dissolution of a nonprofit college in West Virginia are closely patterned on the provisions of the Model Act.[5] After observing these requirements, the governing board of a dissolving college authorizes articles of dissolution to be delivered to the Secretary of State, who officially files the articles and issues a certificate of dissolution.[6] The West Virginia statute does not incorporate the provisions of the Model Act authorizing the Attorney General to seek involuntary dissolution of a nonprofit corporation,[7] but it does provide the circuit courts and other courts of record with general civil jurisdiction with the power to liquidate the assets of a corporation under some circumstances.[8]

III. Recipients of Assets

The assets of a dissolving college in West Virginia are to be distributed according to plan closely patterned on the provisions of the Model Act.[9]

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[1]W. Va. Code Ann., §§ 31-1-34 to 31-1-38, and 31-1-150 and 31-1-151 (1975).

[2]*Id.*, §§ 31-1-39 and 31-1-40; 31-1-154 to 31-1-158.

[3]Compare § 31-1-39 with Model Act, §§ 45 and 49.

[4]W. Va. Code Ann. § 35-2-2; and *see Beatty v. Union Trust and Deposit Co.*, 123 W. Va. 144, 13 S.E. 2d 760 (1967). For a discussion of the cy pres doctrine, *see* Alabama, section I, *supra*.

[5]W. Va. Code Ann., §§ 31-1-39; *see* Model Act, §§ 45 and 49.

[6]W. Va. Code Ann., § 31-1-40; *see* Model Act, § 50.

[7]*See*, Model Act, § 51.

[8]W. Va. Code Ann., § 31-1-41; *see* Model Act, § 54.

[9]W. Va. Code Ann., §§ 31-1-155, 156 and 158; *see* Model Act, §§ 46 and 47.

WISCONSIN

I. Legal Basis

The merger, consolidation and dissolution of nonprofit colleges are governed by the Wisconsin Nonstock Corporation Law, which is closely patterned on the Model Nonprofit Corporation Act.[1] In addition, the Wisconsin Courts are empowered to apply the cy pres doctrine when necessary.[2]

II. Approval of Dissolution

The procedure for the voluntary dissolution of nonprofit colleges in Wisconsin is patterned on the provisions of the Model Act. After observing the provisions, the governing board of the college authorizes the articles of dissolution to be delivered to the Secretary of State, who officially files the articles and issues a certificate of dissolution.[3] A nonprofit college may be involuntarily dissolved in an action brought in circuit court by the Attorney General if a nonprofit college were engaged in fraud or abuse of authority, or had failed to appoint a registered agent in the state, or had improperly solicited or accepted money, or had failed to comply with a court order to produce the records of the corporation.[4] Circuit courts also have jurisdiction to liquidate a college's assets in an action properly brought by a member of the corporation or by a creditor.[5]

III. Recipients of Assets

The Wisconsin Nonstock Corporation Act provides that assets of a dissolving nonprofit college shall be distributed according to a procedure following that of the Model Nonprofit Corporation Act.[6]

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[1]Compare Wis. Stat. Ann., § 181.01 *et seq.* (1957, Supp. 1980) with § § 45-51 of the Model Act. For a discussion of the Model Act, *see* Alabama, section I, *supra.*

[2]*See*, e.g. *In re Gansen's Estate*, 79 Wisc. 2d 180, 255 N.W. 2d 483 (1977); *In re Berry's Estate*, 139 N.W. 2d 72 (Wisc. 1966).

[3]Wis. Stat. Ann., § § 181.50, 181.54, and 181.55.

[4]*Id.*, § 181.56 (Supp. 1980).

[5]*Id.*, § 181.57.

[6]*Id.*, § 181.51.

WYOMING

I. Legal Basis

The dissolution of nonprofit colleges is governed by the Wyoming Nonprofit Corporations Act.[1] The Wyoming Act has no explicit provisions for the merger, consolidation or involuntary dissolution of nonprofit colleges.[2] The Wyoming courts, however, are empowered to apply the cy pres doctrine when necessary.[3]

II. Approval of Dissolution

The voluntary dissolution of a non-profit corporation takes effect when the governing board adopts a resolution to dissolve the corporation and files it with both the Secretary of State and the the clerk of the county where the college was incorporated.[4]

III. Recipients of Assets

After paying its debts, the governing board of a dissolving college must distribute the college's remaining assets in accordance with the provisions of its certificate of incorporation.[5] Although there is no explicit statutory provision requiring that the charitable purposes of gifts be presrved when a nonprofit corporation dissolves, a Wyoming court would probably rely on the cy pres doctrine to effectuate this result in the event of the dissolution of a nonprofit college.

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[1]Wyo. Stat., § 17-6-101 et seq. (1977).

[2]The statues governing merger, consolidation (§ 17-1-401 et seq.) and involuntary dissolution (§ 17-1-614 et seq.) are found in the Wyoming Business Corporation Act which is written with the structure for a for-profit corporation in mind. It might intelligently be construed to mean that Wyoming will also apply these procedures when a nonprofit college merges, consolidates or is involuntarily dissolved.

[3]*Town of Cody v. Buffalo Bill Memorial Association,* 64 Wyo. 468, 196 p.2d 369 (1948). *See also, First National Bank and Trust Company of Wyoming v. Brimmer,* 504 P.2d 1367 (Wyo. 1973).

[4]*Id.*, § 17-6-109.

[5]*Id.*

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